

# Agency Sunset Review of the Department of Environmental Protection

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The Florida Senate

*Prepared by*  
Committee on Environmental Preservation and Conservation



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# I. Summary

Sections 11.901-920, F.S., are known as the Florida Government Accountability Act. Under this act, most state agencies and their respective advisory committees are subject to a “sunset” review process to determine whether the agency should be retained, modified, or abolished.

The Department of Environmental Protection (DEP) is the lead agency in state government for environmental management and stewardship. The head of the department is a secretary who is appointed by the Governor and confirmed by the Senate. The agency’s lead mission is to administer and enforce state and federal laws governing pollution control, the protection of public health and Florida’s unique natural resources; provide resource-based recreation; and acquire, manage, and divest state-owned lands. The purpose of the mission is to protect the public’s health, welfare and safety.

The Senate Committee on Environmental Preservation and Conservation is the primary sunset review committee for the Senate’s review of the department. The Senate Committee on General Government Appropriations is assisting in this review.

As part of the Sunset Review, staff reviewed the agency submissions to the Legislature as specified in s. 11.906, F.S.; OPPAGA reviews; joint committee reports; and appropriations data. Also, staff attended public hearings in Tampa and Winter Haven that were held by the Joint Sunset Review Committee. This report contains data and information to support the following recommendations.

It is therefore recommended that the DEP be retained along with its various programs and advisory councils and committees, with certain modifications. Based on the findings contained in this report, the following recommendations are offered:

**Recommendation #1** — The department is currently requesting a reorganization of some of its programs. Since the department’s planned reorganization coincides with the Sunset Review, it should be considered as part of the Sunset Review process. Therefore, it is recommended that the department provide specific information on the efficiencies and effectiveness that would result from the proposed reorganization to the Legislature for consideration during the 2008 Legislative session.

**Recommendation #2** — Based on the findings in the report regarding the need to have a consolidated governance structure for energy policy, the Legislature may consider the following options, however, staff recommends *Option 1*.

**Option 1** — Create a new independent entity for the development of a state energy and climate policy. The Florida Energy Commission also has made such a recommendation and staff recommends that the Legislature seriously consider this option with certain modifications. Any such entity created should actually consolidate all of the energy policy functions for the state and must include all of the coordination and liaison activities with the federal government and the Federal Energy Regulatory Commission as they relate to utility siting issues. This entity should be administratively attached to the DEP for staff support and to take utilize existing resources, i.e., the Office of Strategic Projects and Planning.

**Option 2** — Continue to have the Florida Energy Office in DEP and the Florida Energy Commission address energy policy for Florida.

Option 3 — Move the Energy Office and the establishment of energy policy to the Governor's office.

**Recommendation #3** — The drycleaning solvent cleanup program is severely underfunded and it is estimated that it will take another 47 years to address the remediation of sites contaminated with drycleaning solvents. Therefore, the Legislature should consider increasing the gross receipts tax on drycleaning, the registration fees for drycleaning facilities, and the tax on perchloroethylene to provide more funds to clean up these sites to protect the groundwater resources. Also, the deductibles that eligible drycleaning facility owners must pay when their sites are cleaned up should be increased. Currently, the deductibles range from \$1,000 to \$10,000.

**Recommendation #4** — Because there are not sufficient funds for the continued cleanup of Mulberry and Piney Point and outstanding land reclamation projects, the Legislature should consider additional sources of revenue to complete these critical projects.

**Recommendation #5** — The responsibility for issuing ERP permits for single family docks may be delegated to the water management districts provided that the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund, approves this change because of the sovereign submerged land use issue. The main benefit would be to the individual person seeking a dock permit in a timely manner if the water management district could process such permit applications more efficiently. Also, the permit applicant could have more access to the permitting entity and therefore may be able to resolve any permitting issues in a more efficient manner. This should result in improved efficiency because of further consolidation of the ERP program.

**Recommendation #6** — Funding remains an issue for state parks. Park fees could be increased; however, significantly increased daily entrance fees would impact the lower income visitors to the parks systems. Camping fees could be increased, particularly for those campers in motor homes or campers who use electrical hookups and waste disposal facilities. The increased fees would offset the rising energy costs that have negatively impacted the parks operations. Another option to increase efficiency and reduce costs is to close those parks where attendance is very low and the costs to maintain are very high. Due to staff shortages in the state parks, the DEP should continue to pursue outsourcing activities such as mowing and restroom maintenance.

**Recommendation #7** — The Florida Senate Environmental Preservation Committee recently completed Interim Project Report 2008-213, *Land Acquisition in Florida*, which specifically addresses the activities associated with the Florida Forever Program and evaluates the state's progress and make recommendations on the potential future of land acquisition efforts. The committee's report provided three options for the Legislature to consider. However, based on the findings in this report, it is recommended that the Legislature consider *Option 2* as it relates to Florida's land buying activities.

Option 1 — Allow the Florida Forever land acquisition program to end and shift the acquisition of conservation lands to federal, local, or private efforts.

Option 2 — Modify the existing Florida Forever Program to include:

- Reworking the entire acquisition list.
- Developing specific targets for each conservation measure so that the acquisition efforts can be tracked and goals reached.
- Creating additional oversight in the acquisition of mega-parcels.

- Limiting the Division of State Lands ability to enter into any contractual agreements with property owners without prior legislative appropriation or authorization.
- Prohibiting the acquisition of or commitment to purchase lands before adequate legislative authorization or appropriation are provided.
- Increasing the emphasis on using less-than-fee alternatives.
- Considering the effects of sea level rise on conservation lands currently in state ownership and for any future acquisitions that are located at or below 5 feet above sea level.
- Pursuing a sustained funding source for land management.
- Requiring managing agencies to take advantage of capital improvement dollars available during the time of acquisition.
- Expanding the land management options to allow for revenue opportunities to pay for the management of the land while not interfering with the intended purpose of the acquisition.
- Developing a database system to track all acquisition activity associated with Florida Forever.

Option 3 — Create an entirely new conservation lands program.

**Recommendation #8**— Advisory Councils and Committees

- It is recommended that the following councils and committees be retained with no modification:
  - Acquisition and Restoration Council
  - Florida Oceans and Coastal Council
  - Florida Water Resources Monitoring Council
  - Florida Greenways and Trails Council
  - Non-mandatory Land Reclamation Committee
  - Small Business Air Pollution Compliance Advisory Council
  - Technical Advisory Council for Water and Domestic Wastewater Operator Certification
  - Recreational Trails Program Advisory Committee
  - State Geologic Mapping Advisory Committee
  - Big Cypress Swamp Advisory Committee
- It is recommended that the Environmental Regulation Commission be retained with certain modifications. At the very least, the Legislature should consider providing for an attorney to be assigned exclusively to the commission who is not an employee of the department. Further, the Legislature may want to consider giving the commission the authority to hire outside consultants on a case-by-case basis to assure that the standards and rules adopted by the commission for use by the department are not unduly biased. The department's wealth of technical and scientific talent must also continue to be utilized as much as possible.
- It is recommended that the Legislature not repeal the statutory authority for the Committee on Landscape Irrigation and Florida-Friendly Design Standards found in s. 373.228, F.S. Instead, that section should be allowed to Sunset after the first mandated 5-year review in 2011.
- It is recommended that the statutory authority for the Land Use Advisory Committee found in s. 378.011, F.S., be repealed since this committee is no longer active and has served its purpose.

**Recommendation #9**— As indicated in the findings in this report, several OPPAGA and Auditor General Reports have severely criticized the department for not being able to determine the costs associated with the various permits issued by the department. With regard to permit fees in general, the department should be required to determine the costs associated with each permit identified in Rule 62-4, F.A.C., and submit

a report to the Legislature by a date certain. Failure to comply could result in certain punitive actions by the Legislature such as placing portions of the department's budget in reserve until the DEP complies with that directive. Once the costs are established, the Legislature should consider statutorily establishing baselines for permit fees in order to ensure that some higher level of cost recovery is achieved. The Legislature may further, by statute, direct the department to adjust the permit fees every 2 years and tie that adjustment to an economic index such as the Consumer Price Index.

Specifically, with regard to the ERP permit fees and the drinking water program fees, the Legislature may want to require that those fees be increased to replace a specified percentage of the general revenue funds that is currently subsidizing those permit costs.

Drinking water systems currently do not pay operating fees, only fees for construction activities. Consideration should be given to establishing annual operating fees.

**Recommendation #10**— The DEP's performance measures attempt to measure the agency's progress; however, many of those measures could be restated or redesigned to better reflect the agency's actual performance and to more adequately document the shortfalls. It is recommended that OPPAGA undertake a review of the department's performance measures and report back to the Legislature prior to the 2009 legislative session with recommendations for improvements.

## **II. Background**

Sections 11.901-920, F.S., are known as the Florida Government Accountability Act. Under this act, most state agencies and their respective advisory committees are subject to a “sunset” review process to determine whether the agency should be retained, modified, or abolished.

Reviews are accomplished in three steps. First, an agency under review must produce a report providing specific information, as enumerated in s. 11.906, F.S., related to:

- Agency performance measures;
- The agency complaint process;
- Public participation in making agency rules and decisions;
- Compliance with state purchasing goals and programs for specified businesses;
- Compliance with statutory objective for each program and activity;
- Program overlap or duplication with other agencies;
- Less restrictive or alternative methods of service delivery;
- Agency actions to correct deficiencies and implement recommendations of legislative and federal audit entities;
- Potential conflicts of interest of its employees;<sup>1</sup>
- Compliance with public records and public meetings requirements;
- Alternative program delivery options, such as privatization, outsourcing, or insourcing;
- Agency recommendations to improve program operations, reduce costs, or reduce duplication;
- The effect of federal intervention or loss of federal funds if the agency, program, or activity is abolished;
- Agency advisory committees;
- Agency programs or functions that are performed without specific statutory authority; and
- Other information requested by the Legislative committee.

Upon receipt of the agency information, the Joint Legislative Sunset Committee and the House and Senate committees assigned to act as sunset review committees<sup>2</sup> must review the information submitted and may request studies by the Office of Program Policy Analysis and Government Accountability (OPPAGA).

Based on the agency submission, the OPPAGA studies and public input, the Joint Legislative Sunset Committee and the legislative sunset review committees will:

- Make recommendations on the abolition, continuation, or reorganization of each state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees; and

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<sup>1</sup> This provision was deleted by s. 1 of ch. 2007-161, L.O.F., and replaced with a requirement that the agency identify “the process by which an agency actively measures quality and efficiency of services it provides to the public.”

<sup>2</sup> Senate committees include: Agriculture, Commerce, Environmental Preservation and Conservation, and Transportation, together with their respective Appropriations Committees.



- Make recommendations on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review.

In addition, the House and Senate sunset review committees must propose legislation necessary to carry out the committees' recommendations.

An agency subject to review is scheduled to be abolished on June 30 following the date of review as specified in s. 11.905, F.S., provided the Legislature finds that all state laws the agency had responsibility to implement or enforce have been repealed, revised, or reassigned to another remaining agency and that adequate provision has been made to transfer certain duties and obligations to a successor agency. If an agency is not abolished, continued, or reorganized, the agency shall continue to be subject to annual sunset review by the Legislature.

The Senate Environmental Preservation and Conservation Committee is the primary sunset review committee for reviews of the Department of Environmental Protection, the Fish and Wildlife Conservation Commission, and the five water management districts. The Senate General Government Appropriations Committee is assisting in these reviews.

### **III. Evaluation Method**

Based upon statutory directives and a review of previous sunset reports, staff of the Senate has developed the following guidelines to be used in reviewing the agencies, their programs, and their advisory committees. Guidelines for agency and program review include:

- What is the mission of the agency?
- Why is the agency performing this mission?
- How are the programs of the agency funded?
- What would be the impact to public health, safety and welfare should the programs be eliminated or modified?
- What duplication of programs exists within the agency or by other agencies or governments?
- Can these agency programs be provided more efficiently?
- Are there management tools in place to appropriately measure program performance?

Guidelines for review of Agency Advisory Councils and Committees include:

- Was the agency advisory committee created to resolve a problem or provide a service? If so, has the problem been solved or the service provided?
- Would there be an adverse effect on the agency or the public if the advisory body were abolished?
- Is the advisory body representative of the public and stakeholders impacted by its actions?

In order to properly evaluate the questions detailed above and support the findings and recommendations, staff would evaluate numerous sources including:

- Agency submissions to the Legislature as specified in s. 11.906.F.S.;
- OPPAGA reviews;
- Independent reviews;
- Public hearings;
- Joint Committee reports;
- Appropriations data; and
- Other sources as deemed relevant.



## **IV. Agency/Program Reviews**

### **A. Agency Overview**

The Department of Environmental Protection (DEP) is the lead agency in state government for environmental management and stewardship. The head of the department is a secretary who is appointed by the Governor and confirmed by the Senate. Three deputy secretaries oversee the department's programs and report directly to the secretary. The agency's stated mission is to administer and enforce state and federal laws governing pollution control, the protection of public health and Florida's unique natural resources; provide resource-based recreation; and acquire, manage, and divest state-owned lands.<sup>3</sup> The purpose of the mission is to protect the public's health, welfare and safety. The DEP is committed to protecting Florida's environment and natural resources to serve the current and future needs of the state and its visitors.<sup>4</sup>

The department's programs are:

- State Lands Program
- Resource Assessment and Management Program
- Water Resource Management Program
- Waste Management Program
- Recreation and Parks Program
- Air Resource Management Program
- Law Enforcement Program
- Administrative Offices
- District Offices

DEP is currently requesting a reorganization and a realignment of some its programs, particularly the water-related programs. The stated reason is to better focus on its water resource management and restoration efforts. The proposed reorganization involves the deletion of the current Division of Resource Assessment and Management and the realignment of water-related programs into two separate divisions — the current Division of Water Resource Management and a new Division of Environmental Assessment and Restoration. Such changes will require revisions to s. 20.255, F.S. The proposed reorganization will also make the following changes:

- Establish the Chief of Standards and Special Projects under the Deputy Secretary for Regulatory Programs and Energy.
- Establish the Office of Florida Geological Survey (formerly a bureau in the Division of Resource Assessment Management) to report to the Deputy Secretary for Land and Recreation.
- Move the oil and gas permitting group from the Florida Geological Survey to the Bureau of Mining and Minerals Regulation to better realign the regulatory activities.

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<sup>3</sup> Florida Department of Environmental Protection Florida Government Accountability Act Agency Report, December 2006.

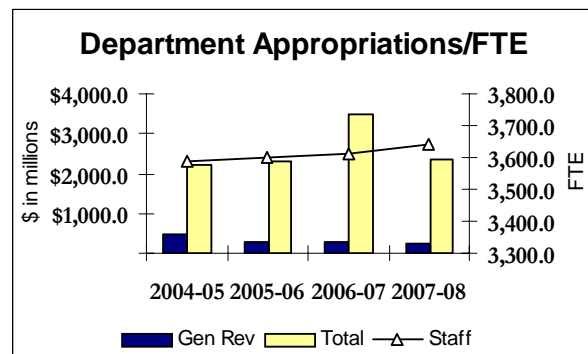
<sup>4</sup> Department of Environmental Protection Final Long-Range Program Plan for FY 2007-08 through FY 2011-12.

- Combine outreach for sustainable initiatives (Pollution Prevention, Green Lodging, Clean Marinas), marketing, and media programs into the Office of Communications to offer community and industry outreach in a comprehensive manner that reflects all of the agency's programs.
- Establish the Office of Technology and Information Services (formerly a bureau in the Division of Resource Assessment Management) to report to the Deputy Secretary for Policy and Planning.<sup>5</sup>

This Sunset Review, while acknowledging the proposed reorganization, focuses on the current structure of the department and its programs. However, the department's planned reorganization coincides with the Sunset Review and should be considered as part of the Sunset Review process. Therefore, it is recommended that the department provide specific information on the efficiencies and effectiveness that would result from the proposed reorganization to the Legislature for consideration during the 2008 Legislative session.

The following is the department's funding information.<sup>6</sup>

	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
Gen Rev	\$460.4	\$288.7	\$288.9	\$245.7
Fed TF's	\$161.9	\$234.6	\$242.7	\$100.1
Other TF's	\$1,575.2	\$1,799.2	\$2,968.3	\$2,023.3
<b>Total</b>	<b>\$2,197.5</b>	<b>\$2,322.5</b>	<b>\$3,499.9</b>	<b>\$2,369.1</b>
 <b>Staff</b>	 3,587.0	 3,599.0	 3,612.0	 3,641.0



The department is funded through General Revenue and the following trust funds<sup>7</sup>. (See Appendix for further information regarding each trust fund)

- Administrative Trust Fund
- Air Pollution Control Trust Fund
- Coastal Protection Trust Fund
- Conservation and Recreation Lands Trust Fund
- Drinking Water Revolving Loan Trust Fund
- Ecosystem Management and Restoration Trust Fund
- Environmental Laboratory Trust Fund
- Florida Forever Trust Fund
- Florida Preservation 2000 Trust Fund
- Grants and Donations Trust Fund
- Inland Protection Trust Fund

<sup>5</sup> DEP letter to Ms. Sharon Larson, Director; Division of Human Resource Management, Department of Management Services, August 9, 2007.

<sup>6</sup> Source: *Committee on General Government Appropriations FY 2007-08 Resource Book* and the DEP's Trust Fund Status and Activity Reports June 2007.

<sup>7</sup> Department of Environmental Protection Trust Fund Status and Activity Reports, September 2007.

- Internal Improvement Trust Fund
- Invasive Plant Control Trust Fund
- Lake Okeechobee Protection Trust Fund
- Land Acquisition Trust Fund
- Minerals Trust Fund
- Nonmandatory Land Reclamation Trust Fund
- Permit Fee Trust Fund
- Save Our Everglades Trust Fund
- Solid Waste Management Trust Fund
- State Park Trust Fund
- Wastewater Treatment and Storm Water Management Revolving Loan Trust Fund
- Water Management Lands Trust Fund
- Water Protection and Sustainability Program Trust Fund
- Water Quality Assurance Trust Fund
- Working Capital Trust Fund

## B. Regulatory Programs and Energy

### 1. Air Resource Management

*Funding:* Air Assessment and Air Pollution Prevention Budget<sup>8</sup>

	<i>FY 2005-06</i>	<i>FY 2006-07</i>	<i>FY 2007-08</i>
<i>Total Budget</i>	\$19,336,327	\$20,441,583	\$20,279,054
<i>FTE's</i>	85	85	85

Affected trust funds: Air Pollution Control Trust Fund, Grants and Donations Trust Fund, and the Permit Fee Trust Fund.<sup>9</sup>

Funding for this program is primarily from federal funds and Title V Air Operation Permit Fees. In 1992, legislation was passed that enabled Florida to accept delegation of the Title V program of the federal Clean Air Act. This program issues operation permits for major sources of air pollution. The Clean Air Act requires that the permit fee for the Title V Air Operation Permits be sufficient to cover the costs associated with the permit, both direct and indirect costs. The act further provided that the fee charged must be at least \$25 per ton of regulated pollutant. The division is currently in rulemaking to increase that fee to \$30 per ton since the current fee is insufficient to cover the costs.

The Division of Air Resource Management receives an operational grant from the EPA pursuant to s. 105 of the Federal Clean Air Act for the purpose of developing and implementing programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air standards. The department has indicated that the state must provide at least a 60 percent match and meet certain maintenance of effort requirements. Also, the state receives a small grant for ambient monitoring pursuant to s. 103 of the Clean Air Act. These grants are issued at 100 percent.

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<sup>8</sup> Department of Environmental Protection

<sup>9</sup> DEP's Trust Fund Status and Activity Reports, Sept. 2007

Other operational funds for the division come from a tag fee on motor vehicles and a small asbestos fee. The division receives no funds from the General Revenue Fund.

*Program Purpose:* To maintain or improve the state's air quality for the protection of human health and welfare; to provide policy guidance and implementation of energy initiatives; and to coordinate the certification process for electrical power plants, electrical transmission lines, natural gas pipelines, and hazardous waste facilities.

*Program Summary:* The Division of Air Resource Management is responsible for implementing the federal Clean Air Act in Florida and monitoring the state's air quality, administering Florida's air pollution control programs, and promoting pollution prevention. The division implements the Environmental Protection Agency delegated and approved air permitting programs mandated under the Clean Air Act and provides technical guidance to the department's district offices and local programs. The division further manages the federal asbestos removal program, through which it provides assistance to district and local program offices. The division coordinates with the efforts of other local, state, and federal air quality programs.

Florida's involvement with the federal Clean Air Act began in 1972 in response to the federal act passed in 1970. That act created the Environmental Protection Agency (EPA) which has the primary role in carrying out the act's provisions.

In 1990, Congress substantially revised the Clean Air Act that gave the EPA broader authority to implement and enforce regulations to reduce air pollutant emissions. However, many of the responsibilities to implement and enforce the new amendments fell as mandates to the states. States are required to develop State Implementation Plans (SIPs)<sup>10</sup> that outline how each state will control air pollution under the Clean Air Act. These SIPs must be approved by the EPA. If a plan does not meet the necessary requirements, EPA can issue sanctions against the state and, if necessary, take over enforcing the Clean Air Act in that state.<sup>11</sup> It is unlikely, however, that the EPA would take over the state's responsibilities under the Clean Air Act if Florida chooses to "give it up." In reality, the state does not have the option of giving the clean air responsibilities back to the EPA because the Clean Air Act specifically directed the states to implement much of the federal act. The EPA does not have the staff or resources to issue permits and implement the act's provisions in Florida. The more likely scenario would be for the EPA to issue severe sanctions against the state. One of the most severe sanctions would be the withholding of federal highway funds for the state. (s. 179 of the Clean Air Act Amendments of 1990.) Other sanctions would include cutting funding for the state's program by withholding federal grants.

- **Air assessment** – As required by the EPA, the division monitors air quality in order to determine violations of the National Ambient Air Quality Standards (NAAQS) for the six criteria pollutants: lead, nitrogen, dioxide, carbon monoxide, ozone, particulate matter, and sulfur dioxide. Data is obtained from a statewide ambient air monitoring network consisting of 221 monitors in 34 of the state's 67 counties. Currently, Florida is one of three states east of the Mississippi River that is in attainment with all of the six criteria pollutants.

Also, the state seeks to reduce mobile-source air pollution by promoting the use of clean fuels, emission controls, and transportation alternatives. Other air assessment activities include modeling

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<sup>10</sup> A SIP is a collection of the regulations, programs and policies that a state will use to clean up polluted areas.

<sup>11</sup> *The Plain English Guide to the Clean Air Act*, U.S. EPA Publication No. EPA-456/K-07-001, April 2007, page 3.

of air quality, the collection and analysis of emissions inventory data, and the adoption of rules to implement the federal Clean Air Act.

- ***Air pollution prevention*** – In accordance with the federal requirements, the division issues air resource permits that establish emission limits and monitors emissions from larger regulated facilities. The division implements the EPA delegated and approved air permitting programs throughout the state and provides technical guidance to the district offices and local programs. Also, the division manages the federal asbestos removal program, through which it provides assistance to district and local program offices.

*Performance Measures:*<sup>12</sup>

<b>Approved Performance Measures</b>	<b>Approved Standards FY 2005-06</b>	<b>Actual FY 2005-06</b>	<b>Approved Standards FY 2006-07</b>	<b>Actual FY 2006-07</b>	<b>Approved Standards FY 2007-08</b>
1. Percent of population living in areas monitored for air quality	90%	89.34%	90%	91%	90%
2. Percent change in pounds of annual emissions of nitrous oxides per capita compared with the level 5 yrs. ago	2.5%	-20.84% CY 2004	2.5%	-22.16%	2.5%
3. Percent change in pounds of annual emissions of sulfur dioxide per capita compared with the level 5 yrs. ago	2.5%	-43.68% CY 2004	2.5%	-31.65%	2.5%
4. Percent change in pounds of organic compounds compared with the level 5 yrs. ago	2.5%	-4.03 % CY 2004	2.5%	-4.5%	2.5%
5. Percent of time population breathes good or moderate quality air	99.1%	99.17%	99.1%	99.5%	99.1%
6. Percent of Title V facilities in significant compliance with state regulations	96%	97%	96%	97%	96%
7. Percent change in pounds of annual emissions of carbon monoxide compared with the level 5 yrs. ago	1.25%	-13.22% CY 2004	1.25%	-16.49%	1.25%

*Findings:*

Florida is only one of three states east of the Mississippi River that meets all of the national ambient air quality standards. As indicated in the performance measures above, nearly 100 percent of the state's population breathes good air. Also, compliance by major sources of air pollution in the state with the federal Clean Air Act delegation of the Title V program is 96 percent. Florida's major sources of air

<sup>12</sup> Provided by the DEP and DEP's Final Long-Range Program Plan for FY 2007-08 through FY 2011-12



pollutants emit significantly less than other states in the Southeast region, thus contributing to the fact that Florida meets all of the national ambient air quality standards.

If the department were abolished along with all of its regulatory programs, the state's federal air program approval would be revoked by the EPA. The statewide air resource management program is largely driven by the federal Clean Air Act and the state must maintain certain responsibilities as provided by that act. The Clean Air Act requires Florida to have an air program. If the DEP fails to meet its obligations under the Clean Air Act, the state would be in violation of Sections 110 and 502 of that act. Sanctions could include loss of federal highway funds.

Because of the mandates in the Clean Air Act that state's implement and administer many of its provisions, it is unlikely that the EPA would allow Florida to permanently give up the programs. Until the state reassumed its responsibilities, the EPA would have to administer the Clean Air Act in Florida, including the SIP, the Title V Permitting Program, the ambient monitoring program required by the National Ambient Air Quality Standards (NAAQS), the delegations under the New Source Performance Standards (NSPS), and the National Emissions for Hazardous Air Pollutants (NESHAP). This would be a significant financial burden for EPA to implement. The EPA has neither the staff nor the financial resources to handle the programs.<sup>13</sup> Air quality protections to the citizens of the state and the environment would likely suffer.

*Recommendation:* Based on the findings above, it is recommended that the air program be retained. Florida residents enjoy good air to breath and the that could be jeopardized if the program were abolished since the EPA would have to administer the program and the EPA region IV office does not have the staff or resources to implement the program in Florida. Further, Florida would face sanctions from the federal government for violations of the mandates in the federal Clean Air Act and the possible loss of federal highway funds.

## 2. Florida Energy Office

*Funding:* Utilities Siting and Coordination Budget<sup>14</sup>

	<i><b>FY 2005-06</b></i>	<i><b>FY 2006-07</b></i>	<i><b>FY 2007-08</b></i>
<i>Total Budget</i>	\$7,654,982	\$20,451,214	\$18,615,948
<i>FTE's</i>	13	13	13

The program is funded through the General Revenue Fund. The DEP also receives approximately \$1.2 million administratively through a State Energy Program (SEP) Grant (CFDA #81.041) from the U.S. Department of Energy. In addition, the DEP also receives approximately \$225,000 in annual funding for special projects that are awarded based on an annual competitive process through the U.S. Department of Energy (CFDA#81.119), which are awarded to the DEP for applicants/recipients ranging from nonprofit corporations to university programs.<sup>15</sup>

<sup>13</sup> Florida Department of Environmental Protection Florida Government Accountability Act Agency Report, December 2006.

<sup>14</sup> Department of Environmental Protection

<sup>15</sup> Id.

*Program Purpose:* The Florida Energy Office is the state's primary center for energy<sup>16</sup> and siting coordination for electrical power plants, electrical transmission lines, natural gas pipelines, and hazardous waste facilities.

*Program Summary:* Prior to 2004, the State Energy Program, which coordinated federal energy programs, promoted energy conservation in all energy use sectors throughout the state, and coordinated energy-related programs of state government, was administratively assigned to the Department of Community Affairs. On June 20, 2003, the state energy program was informally transferred from the Department of Community Affairs to the DEP.<sup>17</sup> Chapter 2004-243, L.O.F., formally transferred the state energy program to the DEP.

In addition to developing and implementing Florida's energy policy, the energy office currently coordinates all federal energy programs delegated to the state, including energy supply, demand, conservation and allocation. The office also promotes advanced clean energy sources, such as hydrogen power, solar energy, bio-based fuels, and clean vehicles, as well as conservation and efficiency measures, and coordinates fuel supplies and electricity recovery during emergencies.

The siting program within the energy office coordinates interagency review and licensing of certain facilities specified in Florida statutes.

The federal responsibilities administered by the energy office primarily come from the federal Energy Policy Act of 2005.

The energy office largely performs the administrative and legal tasks of the siting coordination process together with the Office of the General Counsel. However, the actual licensing entity for the various siting acts is the Governor and Cabinet.

Key programs within the Energy Office include the U.S. Department of Energy Work Plan; Renewable Energy Technology Grants Program; Renewable Energy Technologies Tax Incentives Program; Solar Energy Systems Rebate Program, and manning the State Emergency Operations Center to provide fuel coordination.

Currently, the Energy Office is providing resources to the Governor's Action Team on Energy and Climate Change, and assisting in the implementation of the Governor's Executive Orders relating to climate change and the reduction of greenhouse gas emissions.

*Performance Measures:*<sup>18</sup>

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<sup>16</sup> s. 20.255(8), F.S.

<sup>17</sup> CS/SB 1286 Senate Staff Analysis by the Senate Appropriations Committee.

<sup>18</sup> Provided by the DEP and DEP's Final Long-Range Program Plan for FY 2007-08 through FY 2011-12

Approved Performance Measures	Approved Standards FY 2005-06	Actual FY 2005-06	Approved Standards FY 2006-07	Actual FY 2006-07	Approved Standards FY 2007-08
<b><i>Utilities Siting Coordination</i></b>					
1. Percent electric generation capacity under coordinated Siting oversight compared to baseline year	N/A- New Measure	47%	65%	56%	55%
2. Percent electric transmission capacity under coordinated Siting oversight compared to baseline year	N/A- New Measure	11%	11%	11%	11%

*Findings:*

The performance measures for the siting of electric generation and transmission facilities are difficult to measure as a performance measure for the department. The siting of electric generation facilities and transmission lines is a long and difficult process that is impacted by factors beyond the control of the department. The department has little control on the amount of generation or transmission capacity that is under review at any one time.

Currently, there are various entities in the state that have responsibility over some aspect of the utility industry, energy, or climate change issues.<sup>19</sup> Although pursuant to s. 20.255(8), F.S., the DEP (i.e., the Energy Office) is the primary center for energy policy and utility siting in Florida, the Legislature created the Florida Energy Commission in 2006 to develop recommendations for legislation to establish a state energy policy based on specified principles.<sup>20</sup> The commission is to file annual reports by December 31 of each year beginning in 2007. The first report must:

- Identify incentives for alternative energy research, development, or deployment projects;
- Set forth policy recommendations for conservation of all forms of energy;
- Recommend consensus-based public-involvement processes that evaluate greenhouse gas emissions in this state and make recommendations regarding related economic, energy, and environmental benefits;
- Include recommended steps and a schedule for the development of a comprehensive state climate action plan with greenhouse gas reduction through a public-involvement process, including transportation and land use; power generation; residential, commercial, and industrial activities; waste management; agriculture and forestry; emissions-reporting systems; and public education; and
- Set forth a plan of action, together with a timetable, for addressing additional issues.<sup>21</sup>

On July 13, 2007, Governor Charlie Crist signed a set of Executive Orders during the Serve to Preserve Florida Summit on Global Climate Change that put into place a new direction for Florida's energy future. The three Executive Orders represent the Governor's commitment to addressing global climate change,

<sup>19</sup> Florida Energy Commission 2007 recommendations to the Legislature, Volume 1.

<sup>20</sup> s. 377.901, F.S.

<sup>21</sup> 2006 Regular Session Summary of Legislation Passed, pg 70.

reducing Florida's greenhouse gases, increasing our energy efficiency and pursuing more renewable energy sources, such as solar and wind technologies, as well as alternative energy, such as ethanol and hydrogen.<sup>22</sup>

Executive Order 07-126 established greenhouse gas emission reduction targets for state agencies and departments under the direction of the Governor. Also, these state agencies and departments must take certain actions to improve the climate performance of state government facilities and procurement practices.

Executive Order 07-127 provided for immediate actions to reduce greenhouse gas emissions within Florida and set certain target levels. This executive order directed the DEP to adopt rules providing for the adoption of a maximum allowable emissions level of greenhouse gases for electric utilities in Florida; for the adoption of the California motor vehicle emission standards in Title 13 of the California Code of Regulations, effective January 1, 2005, upon approval by the EPA of the pending waiver,<sup>23</sup> which includes emission standards for greenhouse gases, submitted by the California Air Resources Board; and for the adoption of a statewide diesel engine idle reduction standard.

The Division of Air Resource Management is currently conducting workshops relating to these rule developments.

Executive Order 07-128 established the Florida Energy and Climate Action Plan Team to develop a comprehensive Energy and Climate Change Action Plan to achieve or surpass the targets for statewide greenhouse gas reductions specified in Executive Order 07-127.

On August 13, 2007, Governor Crist appointed 21 members to the Governor's Action Team on Energy and Climate Change. The team members would create a Florida Climate Change Action Plan that will include strategies beyond the Governor's Executive Orders to reduce emissions, including recommendations for proposed legislation for consideration during the 2008 Legislative Session and beyond. On November 1, 2007, the Energy and Climate Action Team issued its Phase I report pursuant to Executive Order 07-128. The Phase II report is due by October 1, 2008.

If the agency were abolished along with this program, various federal agencies would likely take over or pull back programs currently administered by the DEP. Those federal agencies would include the EPA and the U.S. Department of Agriculture's Rural Utilities Service for electric generating facilities; for federally delegated programs such as air permitting programs under the Clean Air Act, water programs such as the National Pollutant Discharge Elimination System and Underground Injection Control; waste programs delegated under the Resource Conservation and Recovery Act, and coastal zone management. Also, the Federal Energy Regulatory Commission would take over permitting for electric transmission lines and natural gas pipelines of a certain scale.<sup>24</sup>

A consolidated state energy program needs to be established for Florida. There appears to be a duplication of effort to establish the energy policy and climate change policy for the state of Florida because the

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<sup>22</sup> <http://www.dep.state.fl.us/climatechange>

<sup>23</sup> The EPA recently denied California's request for a waiver on the greenhouse gas limits on cars. California has since filed suit against the EPA over its actions.

<sup>24</sup> Department of Environmental Protection Florida Government Accountability Act Agency Report, December 2006.

statutes charge two entities (the DEP's Energy Office and the Energy Commission) with setting energy policy for Florida. In addition, the DEP is addressing climate action plans through a separate initiative under the Governor's executive orders. The Legislature must decide where the governance for the energy policy for Florida resides. The consolidated governance structure must include the liaison and coordination activities with the federal government, particularly with the Federal Energy Regulatory Commission.

*Recommendation:* Based on the findings above regarding the need to have a consolidated governance structure for energy policy, the Legislature may consider the following options, however, staff recommends *Option 1*.

*Option 1* — Create a new independent entity for the development of a state energy and climate policy. This is also a recommendation of the Florida Energy Commission and staff recommends that the Legislature seriously consider this option. However, any such entity created should actually consolidate all of the energy policy functions for the state and must include all of the coordination and liaison activities with the federal government and the Federal Energy Regulatory Commission as they relate to utility siting issues. This entity should be administratively attached to the DEP for staff support and to take advantage of existing resources.

*Option 2* — Continue to have the Florida Energy Office in DEP and the Florida Energy Commission address energy policy for Florida.

*Option 3* — Move the Energy Office and the establishment of energy policy to the Governor's office.

### 3. Waste Management

*Funding:* Waste Management and Waste Control Budget<sup>25</sup>

	<i>FY 2005-06</i>	<i>FY 2006-07</i>	<i>FY 2007-08</i>
<i>Total Budget</i>	\$246,338,170	\$270,700,733	\$253,325,950
<i>FTE's</i>	251	251	251

Affected trust funds: Ecosystem Management and Restoration Trust Fund, Grants and Donations Trust Fund, Inland Protection Trust Fund, Permit Fee Trust Fund, Solid Waste Management Trust Fund, and the Water Quality Assurance Trust Fund.<sup>26</sup>

*Program Purpose:* The Division of Waste Management is responsible for protecting public health and the environment through the implementation of state and federal laws relating to recycling, pollution prevention, solid and hazardous waste management, and regulation and registration of aboveground and underground pollutant storage systems. Also, the division manages the cleanup of sites contaminated with petroleum products, drycleaning solvents, or other hazardous wastes.

*Program Summary:* The division's Tallahassee office is responsible for program management and rule development, and works closely with the department's six district offices and various local programs on permitting, compliance, and enforcement activities.

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<sup>25</sup> Department of Environmental Protection

<sup>26</sup> DEP's Trust Fund Status and Activity Reports, Sept. 2007

The following bureaus are responsible for implementing the waste management and control program.

- ***Bureau of Waste Cleanup*** – responsible for all activities relating to the cleanup of contaminated sites, including brownfields, and sites contaminated by hazardous wastes or other pollutants such as drycleaning solvents. The bureau also conducts investigations of ground water contamination and provides scientific and engineering technical assistance and reviews for the division’s non-petroleum cleanup programs. The bureau manages a Contaminated Soils Forum, issues Voluntary Cleanup Tax Credits for voluntary site rehabilitation and cleanup of contaminated brownfields sites and drycleaning sites, and maintains an Institutional Controls Registry for contaminated sites.<sup>27</sup>
- ***Bureau of Petroleum Storage Systems*** – administers the state’s aboveground and underground pollutant storage tank regulation program and the petroleum cleanup program.<sup>28</sup>
- ***Bureau of Solid and Hazardous Waste*** – responsible for the planning, management, permitting and regulation of solid waste and hazardous waste. Operations range from recycling and waste reduction, household hazardous waste and pollution prevention, to financial assurance and full cost accounting of solid waste management facilities and financial assurance of hazardous waste facilities. The bureau also establishes regulatory and management criteria for special wastes such as waste tires, used oil, medications, batteries, pesticides, electronics and mercury devices.<sup>29</sup>

In 1976, the federal Resource Conservation and Recovery Act (RCRA) was passed. Subtitle D of that act provided for solid waste management. States were required to develop a plan which included a permitting program and an inventory of landfills and dumps. The state administers this provision with the approval of the EPA – however, it is not a delegated program. In 1988, the Legislature enacted the Solid Waste Management Act to help local governments meet their solid waste management responsibilities and to promote recycling and reduce the volume of materials going to landfills. Since that time, the act has been substantially amended.

The division permits hazardous waste facilities on behalf of the EPA for which the division receives approximately \$2.8 million to support such activities.

Under The federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA), Superfund and the National Priorities List (NPL) were established and provided a priority system for sites which are heavily contaminated with hazardous materials. Under Superfund, the division enters into contracts with the EPA to do the work for them and to determine if a site qualifies for listing on the NPL. The division also receives federal money to do some of EPA’s work for them thereby establishing a state presence. Further, the state has a more stringent standard for cleanup. Under the state’s global risk-based corrective-action standards (RBCA), cleanup must be made to reduce the risk to human health to one in a million ( $10^{-6}$ ) cancer risk. The state’s cleanup response program is to encourage voluntary cleanup. The state’s action is mostly assessment work and some cleanup to clear the record and clear the property for development. For this activity, the department receives \$7 million in federal grant funds.<sup>30</sup>

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<sup>27</sup> Information received from the DEP.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> Information provided by the department.

The division also works with the Department of Defense (primarily the Navy and Air Force) in partnership with the EPA to clean up military installations. Similarly, the division works with the National Aeronautics and Space Administration (NASA) on their sites. These facilities all have federal RCRA permits and the state is reimbursed for their costs – no state dollars are used.

*Performance Measures:*<sup>31</sup>

<b>Approved Performance Measures</b>	<b>Approved Standards FY 2005-06</b>	<b>Actual FY 2005-06</b>	<b>Approved Standards FY 2006-07</b>	<b>Actual FY 2006-07</b>	<b>Approved Standards FY 2007-08</b>
<b><i>Waste Cleanup</i></b>					
1. Cumulative percent of petroleum contaminated sites with cleanup completed	19%	27%	19%	30%	19%
2. Cumulative percent of drycleaning contaminated sites with cleanup completed	5%	6%	5%	8%	5%
3. Cumulative percent of other contaminated sites with cleanup completed	52%	50%	52%	51%	52%
<b><i>Waste Control</i></b>					
4. Percent of regulated solid and hazardous waste facilities in significant compliance with statutory requirements	92%	98%	92%	99%	92%
5. Percent of inspected facilities that generate, treat, store or dispose of hazardous waste in significant compliance	89%	100%	89%	99%	89%
6. Percent of regulated petroleum storage tank facilities in significant compliance with state regulations	79%	82%	79%	84%	79%
7. Percent of non-government funded contaminated sites with cleanup completed	45%	49%	45%	50%	45%
8. Percent of municipal solid waste managed by recycling/waste-to-energy/land filling	27%/13%/60%	29%/16%/55%	27%/13%/60%	25%/14%/61%	27%/13%/60%

*Findings:*

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<sup>31</sup> Provided by the DEP and DEP's Final Long-Range Program Plan for FY 2007-08 through FY 2011-12

As indicated in performance measure #1, the actual cumulative percent total for petroleum contaminated cleanups has exceeded the approved standard. Petroleum cleanup sites are being cleaned up at a fairly constant rate. The universe of sites to be cleaned up is now at the lower priority numbers. Although there may be a number of sites at this level, these are sites that are relatively less complicated and can be addressed more quickly.

Although expressed as a cumulative total, the performance standard for performance measure #2 relating to the percent of drycleaning contaminated sites with cleanup completed is actually a rate of 1 percent per year. The department has cleaned up a total of 8 percent of the total number of drycleaning sites, not 8 percent per year.

*Drycleaning solvent contaminated site cleanup*

Section 376.3078, F.S., provides for a state-funded program to clean up sites that are contaminated as a result of the operations of a drycleaning facility or wholesale supply facility. The program was sponsored by the drycleaning industry to address environmental, economic, and liability issues resulting from drycleaning solvent contamination. Cleanup liability limits are afforded those owners or operators of drycleaning facilities or wholesale facilities if certain statutory conditions are met. DEP administers the cleanup program which is funded by:

- An annual registration fee for drycleaning facilities and wholesale suppliers of \$100;
- A tax on the gross receipts of drycleaning facilities from the drycleaning or laundering of clothing or other fabrics in the amount of 2 percent;
- An initial \$30 registration fee for any person taxable under the gross receipts of drycleaning facilities tax;
- A 5\$ per gallon tax on the sale or importation of perchloroethylene (PERC) by a drycleaning facility; and
- A \$30 initial registration fee for any person producing or importing PERC.

The drycleaning cleanup program revenues are deposited into the Water Quality Assurance Trust Fund and amount to approximately \$10 million annually.<sup>32</sup> The annual appropriation for use of these funds to clean up the contaminated drycleaning sites is approximately \$10 million. Currently, the department is conducting site rehabilitation at 190 sites with an additional 1,115 sites eligible for a state-funded cleanup. The eligible sites are ranked on a priority system and assigned to contractors for assessment and cleanup work in the order of their ranking. The rehabilitation work is conducted through private contractors that are managed by DEP contract managers. To reduce costs, eligible sites are assigned to program contractors for site assessment in groups based on geographic areas to take advantage of efficiencies and equipment use.

It has been estimated that the average cost for a drycleaning solvent contaminated site cleanup is \$425,000. Because of the limited funds available in the Water Quality Assurance Trust Fund for cleanup, only 8 percent of the eligible sites, or approximately 117 sites have been cleaned up since the program began in 1995. As indicated above, an additional 1,115 sites are eligible for cleanup. Based on the current appropriation levels, cleanup efforts are estimated to continue for the next 47 years. Section 376.3078, F.S., does require eligible drycleaning facilities to pay a deductible based on when the site was admitted into the program. That deductible ranges from \$1,000 to \$10,000.

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<sup>32</sup> Department of Environmental Protection



Overall, cleanup of sites contaminated by petroleum products, drycleaning solvent, and hazardous materials are difficult and costly to cleanup. The number of site cleanups in any given time period is contingent upon funds available, availability of cleanup contractors, and time necessary to clean up the site. Florida and the DEP have aggressively implemented the various cleanup programs because of the urgency to protect Florida's groundwater and drinking water supplies.

There is a great deal of staff turnover in the various site contamination cleanup programs because of pay discrepancies with the private sector.<sup>33</sup> Because the cleanup staff is primarily based out of Tallahassee, staff incurs a lot of traveling, particularly the professional staff such as engineers and geologists.

All lab work needed by the division is done by the department's lab facilities.

The Division of Waste Cleanup conducted 26,000 petroleum compliance inspections last year.

#### *Petroleum contamination cleanup*

Petroleum contamination cleanup work is handled by a combination of department, contract, and local government teams. There are four DEP teams and two private teams. The two private teams have been used by the department to augment the division's own personnel and to manage the large number of active petroleum cleanup sites. According to the department, the number of sites assigned to an individual team depends on the number of site managers. The four internal teams comprise 54 staff (including support staff). The two contracted teams comprise 56 staff (including support staff). According to the department, the full-time equivalent number of site managers in each team varies from year to year, as does the number of sites that each team closes each year. The average number of site closures over the past 3 years for the department's four internal teams is 3.06 sites for each site manager per year. The average number of sites closed by the two contracted teams per year for each site manager is 2.99. The performance level and output of the contracted teams are equal to the department's internal teams. Therefore, the productivity is basically the same for both sets of teams.

Due to the complex nature of contamination remediation, the average cleanup duration for a petroleum contamination site cleanup can span 3 to 5 years and have several site managers assigned throughout those years. It has not been feasible for the department to maintain all of the cleanup staff needed at all times as full-time employees. Further, the addition of FTEs must be approved by the Legislature. The department requests money every year in its LBR for these contractors and it has historically been appropriated to the department.

The contamination site rehabilitation work is cyclical and using outside cleanup contractors has allowed the department to ramp up quickly when additional cleanup personnel is needed. There were approximately 200 contaminated sites closed in 2000. However, as a result of the contracted staff augmentation, program improvements, and greater efficiency, there were about 300 sites closed last year.

According to the department, the contracted teams cost about 2.5 times the amount of the division's cleanup teams. The private firms can generally offer higher salaries to those professional employees such as Professional Geologists and Professional Engineers. The following indicates the costs for the petroleum cleanup teams with the two contracted teams (WRS Inc., and Ecology and Environment (E&E):

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<sup>33</sup> Presentation before the Joint Sunset Committee Staff on September 25, 2007.

Teams	Positions	Salary & Other Direct Costs
Petroleum Cleanup Team 1	13	\$805,130
Petroleum Cleanup Team 2	16	\$984,342
Petroleum Cleanup Team 3	12	\$718,377
Petroleum Cleanup Team 4	13	\$837,481
<b>TOTAL</b>		<b>\$3,345,330*</b>
Contractor – WRS	27	\$4,199,725
Contractor – E&E	29	\$4,400,042
<b>TOTAL</b>		<b>\$8,599,567</b>

\*Note: The department's staff total is based on FY 2006-07 salaries plus benefits and direct cost.

Both teams have performed very well for the department and have provided diversity, competition, and flexibility to the program.

All of the hazardous waste permitting and enforcement is consolidated in the main Tallahassee office, not in the district offices.

#### *Solid waste and recycling*

In performance measure #8, the percent of solid waste going to landfills has increased because it is less expensive than either recycling or disposal of the waste to a waste-to-energy facility. The reduction in recycling rates has been decreasing nationally as well as in Florida, primarily because the market for recycled materials is very weak.

During the 2007 Legislative session, the Legislature updated various statutory provisions relating to solid and hazardous waste management to streamline the statutes and increase efficiency. The legislation deleted various obsolete provisions from the statutes such as deleting the provisions relating to Class II landfills since these are no longer being permitted in Florida. Also, the Statewide Multipurpose Hazardous Waste Facility Siting Act was repealed since it had never been used and there were no permits pending to use the act's procedures.

Provisions relating to the innovative grant program were broadened to allow for greater use of the program. Further, certain local match requirements were reduced and can be waived under certain circumstances to allow the local governments to more easily qualify for and receive hazardous waste collection grants to continue the programs in their communities.

Florida's Solid Waste Management Act was enacted in 1988 to provide comprehensive programs to promote recycling and reduce the volume of materials going to landfills. At that time, the Solid Waste Management Trust Fund (SWMTF) was created to fund solid waste management activities. To assist the counties in their recycling efforts, the SWMTF established certain grant programs. The types of grants available included small county grants, recycling and education grants, waste tire grants, and litter and marine debris prevention grants.

The original purposes of the recycling grants to the counties was to jump-start county recycling programs. For several years, approximately \$30 million was appropriated annually from the SWMTF for water quality and restoration projects. As a result, the Legislature in 2002 provided for the permanent reallocation of the sales tax proceeds that were being deposited into the SWMTF. Those funds are now deposited into the Ecosystem Management Trust Fund to be used for water quality improvement and water restoration projects. The SWMTF is now funded almost exclusively from the waste disposal fees imposed

on tires purchases at retail. This fee generates approximately \$19 million annually and supports not only the grants program, but also the general solid waste activities of the Division of Waste Management.

Counties are required to implement a recyclable materials recycling program; however, counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs.<sup>34</sup> Counties are encouraged to recover a significant portion of at least four of the following materials: newspaper, aluminum cans, steel cans, glass, plastic bottles, cardboard, office paper, and yard trash.

In 2002, OPPAGA recommended in a Justification Review the elimination and phasing out of the recycling and education grants. The grants were successful in establishing recycling programs in the larger counties. Small counties were only required to provide an opportunity to recycle. Due to limited revenues over the last several years, the Legislature has not funded recycling grants for the larger counties. However, small counties continue to receive some level of grant funding to hold them harmless and provide operating funds needed to operate their local solid waste programs. OPPAGA had suggested that if the Legislature decided to continue funding these grants, the grants should be used to increase commercial recycling and encourage the development of recycling markets.<sup>35</sup>

For the past several years the Legislature has provided approximately \$8 million annually to be used for the remaining solid waste grants program. Those grants include the small county grants, innovative grants that are provided on a competitive basis, and waste tire grants. The majority of the \$8 million annual appropriation has been used by the small counties who rely on such funds to operate their local waste management activities and operate their landfills. Without this funding, many of the small counties would not be able to provide solid waste services in their area.

The DEP has assumed delegation, authorization or primacy for three major waste-related regulatory programs from the EPA: solid waste management (federal Solid Waste Disposal Act), Hazardous Waste Management (federal RCRA), and Hazardous Waste Corrective Action (federal Hazardous and Solid Waste Amendments or HSWA). In addition, the department has assumed primacy for certain contaminated site cleanup activities from the federal government which include assessment of potentially contaminated sites for possible inclusion on the NPL Superfund from EPA, site assessments under the federal CERCLA, and oversight of cleanup of contaminated federal facilities owned by the Department of Defense and NASA. All of these programs are authorized by the federal government for DEP to administer to protect public health and the environment.<sup>36</sup>

If the department and these programs were abolished, the impact regarding the federal programs would lead to direct federal intervention. The federal government would most likely take preemptive action to prevent collapse of mandatory public health, waste cleanup and waste management programs. The federal government would seek to enforce the legally binding agreements currently in place. The EPA is currently not staffed or funded to assume these responsibilities. Public health and environmental protection would be compromised in the state since the EPA would not have the presence and familiarity with conditions specific to Florida.<sup>37</sup>

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<sup>34</sup> s. 403.706(2), F.S.

<sup>35</sup> OPPAGA Justification Review, March 2002, Report No. 02-15.

<sup>36</sup> Department of Environmental Protection Florida Government Accountability Act Agency Report, December 2006.

<sup>37</sup> Id.

Further, if the department and its waste cleanup and control programs were abolished, cleanup activities for sites contaminated with petroleum products, drycleaning solvents, and other hazardous materials would cease. Such contaminated sites pose significant risks to the public health and the environment as well as to the state's drinking water supply.

*Recommendation:* Based on the findings above, it is recommended that the waste management program be retained because of the protections provided for public health and the environment through the implementation of the various federal and state laws relating to recycling, pollution prevention, solid and hazardous waste management, and cleanup of sites contaminated by drycleaning solvents, petroleum products, and hazardous materials. Because the drycleaning solvent cleanup program is severely underfunded, the Legislature should consider increasing the gross receipts tax on drycleaning, the registration fees for drycleaning facilities, and the tax on perchloroethylene to provide more funds to clean up these sites to protect the groundwater resources. Also, the deductibles that eligible drycleaning facility owners must pay when their sites are cleaned up should be increased. Currently, the deductibles range from \$1,000 to \$10,000.

#### 4. Water Resource Management<sup>38</sup>

*Funding:* Beach Management, Water Resource Protection and Restoration, and Water Supply Budget<sup>39</sup>

	<i>FY 2005-06</i>	<i>FY 2006-07</i>	<i>FY 2007-08</i>
<i>Total Budget</i>	\$836,814,111	\$832,827,196	601,977,5989
<i>FTE's</i>	367	375	381

Affected trust funds: Drinking Water Revolving Loan Trust Fund, Ecosystem Management and Restoration Trust Fund, Grants and Donations Trust Fund, Inland Protection Trust Fund, Lake Okeechobee Protection Trust Fund, Land Acquisition Trust Fund, Minerals Trust Fund, Nonmandatory Land Reclamation Trust Fund, Permit Fee Trust Fund, Wastewater Treatment Storm and Water Management Revolving Loan Trust Fund, Water Management Lands Trust Fund, Water Protection and Sustainability Program Trust Fund, and the Water Quality Assurance Trust Fund.<sup>40</sup>

*Program Purpose:* The Division of Water Resource Management is responsible for protecting the quality of Florida's drinking water, rivers, lakes, estuaries, wetlands and aquifer systems; protecting and restoring the state's beaches and coastal systems; reclaiming lands after they have been mined for phosphate and other minerals; and financing environmental projects and infrastructure.

*Program Summary:* The division provides the technical basis for setting the state's surface water and ground water quality standards, and implements a variety of programs to monitor the quality of those water resources.

The individual programs include:

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<sup>38</sup> The DEP is currently undergoing a reorganization of the department. Under the proposed reorganization, the Division of Water Resource Management will continue to exist; however, some of the functions and duties will be transferred to a newly created Division of Environmental Assessment and Restoration.

<sup>39</sup> Department of Environmental Protection

<sup>40</sup> DEP's Trust Fund Status and Activity Reports, Sept. 2007

- ***Beach management*** – The focus is to manage Florida’s sandy beaches to minimize erosion, provide storm protection, and preserve natural resources. There are 825 miles of sandy beach in Florida; of that, 388 miles are deemed “critically eroded.” Under the Strategic Beach Management Plan, 196 miles of beach are under management and restored. According to the department, since 2002-03, \$220.3 million has been awarded in financial assistance for beach restoration and management.<sup>41</sup>

This program also regulates coastal construction.

- ***Water resources protection and restoration*** – The division implements comprehensive strategies for assessment, protection, and restoration of Florida surface and ground water resources. A number of regulatory, non-regulatory, and financial assistance programs are used to address the water quality problems identified and prioritized through monitoring and assessment programs.
  - ***Drinking water*** – Pursuant to ch. 403, Part IV, F.S., and delegation of the federal program under the federal Safe Drinking Water Act from the EPA, the DEP has the primary role of regulating public water systems in Florida. The EPA regional office in Atlanta does not have the staff resources to administer the program in Florida.

A public water system is one that provides water to 25 or more people for at least 60 days each year or serves 15 or more service connections. These public water systems may be publicly or privately owned and operated. There are approximately 6,000 public water systems in Florida.

Very small water systems which provide water for public consumption, but which do not fall under the above definition, are regulated by the Department of Health and the county health departments. Bottled water and water vending machines are regulated by the Department of Agriculture and Consumer Services. Digging of water wells, both public and private, and the quantities of water that may be extracted, are regulated by the water management districts.

The division conducts regular physical inspections and provides extensive technical assistance.

- ***Stormwater*** – The EPA developed the federal National Pollutant Discharge Elimination System (NPDES) stormwater permitting program in two phases. Phase I, promulgated in 1990, addressed "large" and "medium" municipal separate storm sewer systems (MS4s) located in incorporated places and counties with populations of 100,000 or more, and eleven categories of industrial activity, one of which is large construction activities that disturb 5 or more acres of land.

Phase II, promulgated in 1999, addressed additional sources, including MS4s not regulated under Phase I, and small construction activities disturbing between 1 and 5 acres.

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<sup>41</sup> Presentation before the Joint Sunset Committee Staff on September 25, 2007.

In October 2000, EPA authorized the DEP to implement the NPDES stormwater permitting program in the State of Florida (in all areas except Indian Country lands). DEP's authority to administer the NPDES program is set forth in s. 403.0885, F.S. The NPDES stormwater program regulates point source discharges of stormwater into surface waters of the state from certain municipal, industrial and construction activities. DEP is responsible for promulgating rules and issuing permits, managing and reviewing permit applications, and performing compliance and enforcement activities.

Pursuant to federal law, the NPDES permit fees must cover the entire cost of the program. Because of this, the permit fees have been increased to cover the program's costs.

The NPDES stormwater permitting program is separate from the state's stormwater/environmental resource permitting programs (found under Part IV, Chapter 373, F.S. and ch. 62-25, F.A.C.) Also, there are local stormwater/water quality programs, which have their own regulations and permitting requirements. The NPDES program regulates point source discharges of stormwater into surface waters. There are approximately 300 municipal systems permitted and approximately 2,500 industrial sites permitted. According to the department, this program is largely contracted out because the Legislature has not appropriated positions for this program. In the General Appropriations Act for FY 2007-2008, the department was appropriated \$2,283,140 from the Permit Fee Trust Fund for this program. The contractors handle the thousands of permits needed for the NPDES stormwater program. The permit fees for this program have been increased to cover the costs of the program, as required by the federal law. The DEP oversees the work of the contractors and the program is not just handed over without supervision. The contractors do not, however, handle enforcement. That is one area the department does not outsource.

- Wastewater – The division's Office of Wastewater Management permits and enforces the domestic and industrial wastewater programs and coordinates the federally authorized NPDES program. There are over 3,000 individually permitted domestic wastewater facilities, not including septic systems, and approximately 1,100 industrial wastewater facilities in Florida. Less than a quarter of these facilities are authorized to discharge to surface water. As surface water dischargers, they are subject to the NPDES requirements. However, many of these NPDES facilities also discharge to ground waters. The remaining facilities are authorized solely as groundwater discharges through land-application, beneficial reuse of reclaimed water, or deep-well injection.
- **Mine reclamation** – The department regulates the reclamation of mined land and the protection of water resources at mines throughout Florida. Specific programs include:
  - Dam safety.
  - Mandatory nonphosphate reclamation of mines extracting heavy minerals – administer rules relating to the mining of Fuller's earth, limestone, dolomite and shell, gravel, sand, dirt, clay, peat, and other solid resources, except phosphate.
  - Mandatory phosphate mines – administer rules relating to reclamation of lands mined for phosphate after 1975 and ERP permits for phosphate mined lands.
  - Nonmandatory reimbursement – provide funding for land reclamation programs for eligible phosphate lands mined before July, 1975.

- Mine safety – provide training throughout Florida.
  - Phosphate management – regulate the design, construction, operation and maintenance of phosphogypsum stacks.
  - Technical support – provide engineering, hydrology, and computer support to other mine reclamation programs.
- **Underground injection** – The underground injection program is an entirely federal program for which the state has primacy. The federal rules are adopted in department rules by reference. The division receives a federal UIC grant of \$260,000 to administer the program. There are five classes of injection wells:
    - Class I wells are used to inject hazardous waste (new hazardous waste wells were **banned** in 1983). There are more than 125 active Class I wells in Florida. The majority of the Class I injection facilities in Florida dispose of non-hazardous, secondary-treated effluent from domestic wastewater treatment plants.
    - Class II wells are used to inject fluids associated with the production of oil and natural gas or fluids used to enhance hydrocarbon recovery.
    - Class III wells inject fluids for extraction of minerals (none in Florida).
    - Class IV wells or septic systems which are used to dispose of hazardous or radioactive wastes into or above an underground source of drinking water. **(Banned in Florida).**
    - Class V wells not included in the other well classes which generally inject nonhazardous fluid into or above an underground source of drinking water.
- **Watersheds** –The Watershed Management Program was created in October 1999 to implement the provisions of the Florida Watershed Restoration Act of 1999 as provided in s. 403.067, F.S. The overall program consists of the following individual programs:
    - **Watershed planning and coordination** – coordinates the activities of the watershed restoration program within the department and with local stakeholders.
    - **Watershed monitoring** – implements the state’s surface and ground water monitoring programs, including coordination with other monitoring entities.
    - **Watershed data services** – works with monitoring entities around the state to assure that their data is in our central statewide data base and provides GIS services to the bureau.
    - **Watershed assessment** – conducts assessments of the impacts of point and nonpoint source discharges on surface waters. Develops wasteload allocations for point source discharges and the development of total maximum daily loads (TMDLs) for impaired waters.
    - **Ground water protection** – conducts assessments of the quality of Florida’s ground water resources that provide drinking water for over 90 percent of Florida’s residents. Florida has more than 700 springs, representing the largest concentration of freshwater springs on Earth. The state has made it a priority to protect Florida’s springs through the Florida Springs Initiative. The Florida Springs Initiative is a comprehensive protection effort to fund scientific research, water quality and biological monitoring, education and outreach, landowner assistance projects, and springs restoration. For the past 6 years

(FY 2001-02 through FY 2006-07), the department has received approximately \$2.5 million annually in its base budget and two FTEs for the Springs Initiative.<sup>42</sup>

- **Nonpoint source management** – implements the state’s nonpoint source management program including the administration of Section 319 grants<sup>43</sup> in which the program partners with water management districts (WMD) and local governments to implement projects to reduce nonpoint source pollution. For FY 2007-08, the grant appropriation amounted to \$10 million.<sup>44</sup>
- **NPDES stormwater** – implements the NPDES stormwater permitting program which has been delegated from the EPA to the department.
- **Water Policy** – The Office of Water Policy plays a key role in ensuring effective implementation of DEP’s responsibilities under the Florida Water Resources Act (ch. 373, F.S.). The office addresses statewide water management issues in coordination with the water management districts and other agencies. Examples include water plans for the DEP and water management districts, minimum flows and levels for the state’s water resources, and regional water supply planning.

• **Wetlands** -- The Environmental Resource Permitting Program (ERP):

- Is designed to ensure that activities in uplands, wetlands and other surface waters do not degrade water quality or degrade habitat for aquatic or wetland dependent wildlife.
- Addresses dredging, filling, and construction in wetlands and other surface water, as well as stormwater and surface water management systems in uplands.
- Permits activities in open water, including docks and marinas.
- Requires submerged lands authorization for any construction on or use of submerged lands owned by the state.<sup>45</sup>

Most of the ERP permits are issued by the water management districts. However, DEP issues the ERP permits relating to solid waste, hazardous waste, domestic waste, and industrial waste facilities; mining; power plants and transmission lines; docks that are not part of a larger plan of residential or commercial development (largely single family); systems located in whole or in part seaward of the coastal construction control line; seaports; and boat ramps, mooring buoys, and artificial reefs. DEP also has a relationship with the U.S. Army Corps of Engineers regarding necessary federal dredge and fill permits. The DEP has developed a joint application for the ERP permit to include authorization to use state-owned submerged lands and the federal dredge and fill permit.

The division develops the rules and guidance for implementing these programs consistently throughout Florida.

About \$100-200 million is provided yearly through various revolving loan programs to build or improve domestic wastewater and drinking water facilities, to reclaim mined lands, and to implement stormwater and other nonpoint source management projects. The financial programs include:

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<sup>42</sup> Information from the DEP, Division of Water.

<sup>43</sup> These are grants issued pursuant to section 319 of the Clean Water Act for implementing certain management programs relating to nonpoint source pollution issues.

<sup>44</sup> DEP Agency Sunset Review spreadsheet of federal grants, October 18, 2007.

<sup>45</sup> Description of programs found at <http://www.dep.state.fl.us/water/>.



- Clean Water State Revolving Fund for wastewater and stormwater systems.
- Drinking Water State Revolving Fund loans.
- Disadvantaged small community<sup>46</sup> wastewater grants.
- Legislative water projects [Community Budget Issue Request (CBIR)].
- Water Supply Restoration – for contaminated drinking water wells.
- Alternative Water Supply Funding.

*Performance Measures:*<sup>47</sup>

Approved Performance Measures	Approved Standards FY 2005-06	Actual FY 2005-06	Approved Standards FY 2006-07	Actual FY 2006-07	Approved Standards FY 2007-08
<b><i>Beach Management</i></b>					
1. Percent of beaches that provide upland protection, wildlife, or recreation according to statutory requirements	82%	75%	81%	76.8%	76%
<b><i>Water Resource Protection and Restoration</i></b>					
2. Percent of reclaimed water (reuse) capacity relative to total domestic wastewater capacity	55%	58%	56%	57.9%	59%
3. Percent of facilities/sites in compliance	88%	93.2%	90%	93.4%	90%
4. Percent of surface waters that meet designated uses	88%	88%	88%	88%	88%
5. Percent of ground waters that meet designated uses	85%	91.7%	88.9%	91.7%	88.9%
6. Percent of phosphate mined lands that have been reclaimed; and percent of phosphate mined lands that have been reclaimed and released from reclamation obligations	N/A- New Measure	64%/31%	65%/32%	64.5%/31.1%	65%/32%
7. Percent of public water systems with no significant health drinking water quality problems	93.5%	95%	94%	94.5%	94%

*Findings:*

<sup>46</sup> As defined in s. 403.1838, F.S., a financially disadvantaged small community means a municipality with a population of 7,500 or less, according to the latest decennial census and a per capita annual income less than the state per capita annual income as determined by the U.S. Dept. of Commerce.

<sup>47</sup> Provided by the DEP and DEP's Final Long-Range Program Plan for FY 2007-08 through FY 2011-12

The department is continually adjusting the number of miles of critically eroded shoreline which is used as the basis for performance measure #1 — the percentage of beaches that provide upland protection, wildlife habitat, and recreation. As the area of critically eroded beaches and shorelines increases because of hurricanes and erosion, the percentage of beaches that protect uplands, wildlife and recreational opportunities decreases. The department has used contractor assistance to increase its ability to survey beach and dune system damage, process permit applications, and oversee coastal construction and restoration activities.

Performance measure #6 is intended to reflect the percentage of all “mandatory” phosphate mined lands over time. The measure is confusing and has led to misunderstanding. An overall percentage for the ultimate life of the program may be a high percentage; however, the percentage changes annually as new mining continues every year, adding to the acreage that will have to be reclaimed.

Prior to the abandonment of the phosphogypsum stacks at Mulberry and Piney Point in February 2001, the Nonmandatory Land Reclamation Trust Fund had a \$50 million reserve balance. Chapter 2001-134, L.O.F., amended s. 378.035, F.S., to allow for the expenditure of funds from the \$50 million reserve to abate imminent hazards under s. 403.4143(3), F.S., and to close and maintain abandoned phosphogypsum stack systems. The cash balance in the fund has been depleted. As of December 31, 2007, \$163.86 million has been expended for Mulberry and Piney Point. The department estimates both sites will be completed in FY 2011-2012. The total estimated cost is \$235.3 million.

There are not sufficient funds for the continued cleanup of Mulberry and Piney Point and outstanding land reclamation projects. The department estimates \$46.9 million is required to complete Mulberry Piney Point. In addition, the estimated cost to reclaim the remaining approximate 8,000 acres of mined land is \$40-\$50 million.

The DEP has assumed delegation or has primacy for four major water-related regulatory programs from the EPA: drinking water (federal Safe Drinking Water Act), wastewater (NPDES) program in the federal Clean Water Act, stormwater (NPDES) in the federal Clean Water Act, and underground injection control (Safe Drinking Water Act). Also, DEP implements the TMDL program mandated by the federal Clean Water Act. The DEP implements the ERP program together with the water management districts and has a formal relationship with the U.S. Army Corps of Engineers for beach management and Everglades Restoration. The South Florida Water Management District also plays a significant role in the Everglades Restoration Program.<sup>48</sup>

If the department and its programs were abolished, the state would default on its federal delegations and the accompanying obligations including operating agreements, work plans, and grant agreements. The federal government would certainly intervene to prevent the collapse of mandatory public health and water quality protection programs.<sup>49</sup>

The ERP program was created by the Florida Environmental Reorganization Act of 1993 (ch. 93-204, L.O.F.) and is jointly implemented by the DEP through its district offices and the water management districts. The ERP was an attempt to consolidate responsibilities and requirements for former dredge and fill permits issued by the old Department of Environmental Regulation and the management

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<sup>48</sup> Department of Environmental Protection Florida Government Accountability Act Agency Report, December 2006.

<sup>49</sup> Id.

and storage of surface water permits issued by the water management districts. Most of the ERP permits are issued by the water management districts, however large projects with statewide implications are issued by the DEP. Operating agreements between the department and the water management districts spell out which agency will process any given application. Under this division of responsibility, the DEP's authorizations primarily address the water quality, water quantity (flooding), and wetland impacts associated with single-family residences and small multi-family dwellings, docks and marinas, mining, utility construction, coastal development, seaports, navigational dredging, and other water-related projects that are not part of larger plans of development. Where a proposed activity involves the use of sovereign submerged lands, a proprietary authorization on behalf of the Board of Trustees of the Internal Improvement Trust Fund is linked to the permit.<sup>50</sup>

The water management districts review and take action on all the other ERP applications and applications for which the department itself needs a permit.

Some local governments also implement wetland and stormwater permitting programs. In order to eliminate duplication with counties, s. 373.441, F.S., allows delegation to counties which meet certain criteria. This delegation has occurred from the DEP and the South Florida Water Management District for portions of the ERP program in Broward County. The county administers the program pursuant to a delegation agreement with oversight from both DEP and the South Florida Water Management District.

Although the DEP issues ERP permits for single-family docks because of its responsibility regarding sovereign submerged land, the water management districts may be able to more effectively permit these activities, provided the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund, approves this change.

Other programs if abolished in Florida would have to be administered by some other entity. In the case of many of the programs in the DEP, there are federal requirements tied to the programs and the EPA would be forced to implement the programs in Florida. Such programs include the TMDL program and the State Revolving Funds pursuant to the federal Clean Water Act and the federal Safe Drinking Water Act. Florida receives approximately \$70 million in federal funding for these revolving loan funds. The moneys are passed directly to local governments for significant public health projects to provide safe drinking water and provide sewer services. If Florida were to surrender these funds, the moneys would be distributed to other states.<sup>51</sup>

Florida also receives federal money that is passed through to the local governments for beach restoration projects. This money is based on a three-way cost sharing among local governments, the state, and the federal government. If abolished as a state program, many local governments could not afford to compensate for the loss of state funds; and without sufficient local project matching funds, the federal government most likely would not participate in the projects. The result would be fewer beach restoration projects and more coastal erosion.<sup>52</sup> Beaches are important to Florida not only because a significant portion of the population lives close to the coast, but because much of Florida's tourism is tied to the water and its beaches. Further, beaches provide critical habitat for many species, some of which are currently threatened or endangered.

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<sup>50</sup> Department of Environmental Protection Efficiency and Revenue Analysis, Regulatory Programs under Chapter 373 and Chapter 403, Part VI, Environmental Resource Permitting and Drinking Water, January 2008.

<sup>51</sup> Id.

<sup>52</sup> Id.

*Recommendation:* Based on the information above, it is recommended that the water resource management programs be retained.

Because there are not sufficient funds for the continued cleanup of Mulberry and Piney Point and outstanding land reclamation projects, the Legislature should consider additional sources of revenue to complete these critical projects.

The responsibility for issuing ERP permits for single family docks, however, may be delegated to the water management districts provided that the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund, approves this change because of the sovereign submerged land use issue. The main benefit would be to the individual person seeking a dock permit in a timely manner if the water management district could process such permit applications more efficiently. Also, the permit applicant could have more access to the permitting entity and therefore may be able to resolve any permitting issues in a more efficient manner. This should result in improved efficiency because of further consolidation of the ERP program.

## C. Land and Recreation

### 1. Recreation and Parks

*Funding:* Land Management, Recreational Assistance to Local Governments, State Park Operations, and Coastal and Aquatic Managed Areas Budget<sup>53</sup>

	<i>FY 2005-06</i>	<i>FY 2006-07</i>	<i>FY 2007-08</i>
<i>Total Budget</i>	\$228,565,934	\$252,283,505	255,077,031
<i>FTE's</i>	1,196.5	1,201.5	1,209.5

Affected trust funds: Conservation and Recreation Lands Trust Fund, Ecosystem Management and Restoration Trust Fund, Florida Forever Trust Fund, Grants and Donations Trust Fund, Land Acquisition Trust Fund, and the State Park Trust Fund.<sup>54</sup>

*Program Purpose:* The program's purpose is to anticipate and meet the outdoor recreation demands of Florida's residents and visitors and to ensure that an adequate natural resource base is maintained to accommodate future demands and preserve the quality of the environment.<sup>55</sup>

*Program Summary:* The program oversees the state's parks, coastal and aquatic managed areas, and the development and management of a statewide greenways and trails system and has four major services: land management, recreational assistance to local governments, state park operations, and management of coastal and aquatic managed areas. Through the program, the department manages areas and facilities for recreation, such as camping, swimming, picnicking, hiking, and beach activities. Another important aspect

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<sup>53</sup> Department of Environmental Protection

<sup>54</sup> DEP's Trust Fund Status and Activity Reports, Sept. 2007

<sup>55</sup> *FGAR-The Florida Government Accountability Report for Agriculture & Environmental Protection*, 2006, Office of Program Policy Analysis and Government Accountability, pg. 63.

of the program is the conservation of the state's natural and cultural resources through preservation and restoration management techniques, historical interpretation, technical services, and grants to local governments for outdoor recreational projects.

- **Office of Coastal and Aquatic Managed Areas (CAMA)** – Florida's submerged lands are managed through a variety of programs. These lands encompass over 1.8 million acres in the state's 41 aquatic preserves, over 2.3 million acres in the Florida Keys National Marine Sanctuary [managed in partnership with National Oceanic and Atmospheric Administration (NOAA)] and over 413,766 acres in the state's three National Estuarine Research Reserves which includes 38,593 acres of coastal uplands. The funding for this effort is mainly federal funds with a 70/30 state match.<sup>56</sup> The state designates the reserves and the federal government approves the designation and the management plan on a 5-year cycle. The state designated aquatic preserves are wholly contained in the federally designated reserves. The management plans for the reserves are approved by the Governor and Cabinet; however, CAMA for the most part, does not perform land management activities. Sixty five percent of the reserves are in state waters.

Thirteen of the state's aquatic preserves have aquaculture leases. The use of sovereign submerged lands for aquacultural production is authorized by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund. The Division of Aquaculture in the Department of Agriculture and Consumer Services is responsible for the aquaculture leasing program.<sup>57</sup>

CAMA also co-manages the Florida Keys Marine Sanctuary with NOAA. For this effort, the department receives an annual grant of approximately \$2.3 million from NOAA. The actual appropriation for FY 2007-08 was \$2 million.<sup>58</sup>

The Coral Reef Conservation Program is a 50/50 state/federal program and encompasses an area from Miami-Dade County north.<sup>59</sup> If the state did not manage this area, the federal government could probably do more; however, these are state waters, for which the state has the general obligation and authority to manage. The management authority for the program is the federal Coral Reef Conservation Act of 2000, and the state works with the U.S. Coral Reef Task Force.

CAMA also provides support for the Florida Oceans and Coastal Council to assist the state in identifying new management strategies to achieve the goal of maximizing the protection and conservation of ocean and coastal resources while recognizing their economic benefits.

CAMA works closely with the Fish and Wildlife Conservation Commission (FWC) to coordinate and minimize duplication of efforts in the areas of environmental education and aquatic management. Through a Memorandum of Understanding (MOU) between the DEP and the FWC, the two agencies established the Marine Resource Conservation Partnership. According to the MOU, the purpose of the partnership is to effectively manage the marine resources of the state for the benefit of the public and future generations by designing and implementing non-regulatory saltwater recreational outreach and education programs through inter-agency coordination and

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<sup>56</sup> s. 315 of the federal Coastal Zone Management Act of 1972, as amended.

<sup>57</sup> <http://www.doacs.state.fl.us/onestop/aqua/aqualeas.html>

<sup>58</sup> DEP Agency Sunset Review spreadsheet of federal grants, October 18, 2007.

<sup>59</sup> s. 204 of the federal Coral Reef Conservation Act of 2000.

cooperation in accordance with state-approved management plans, and contingent on available funding.<sup>60</sup>

- **Office of Greenways and Trails** – This office manages a statewide system of greenways and trails for recreational and conservation purposes, including the Marjorie Harris Carr Cross Florida Greenway.<sup>61</sup> This office also provides grants for trail projects and administers the \$4.5 million Florida Greenways and Trails Land Acquisition Program under the Florida Forever Act. Responsibilities for this office include acquisitions and management of these properties. Applicants under this program are usually local governments. These acquisitions are linear properties and always involve willing sellers.
- **State park operations** – The Division of Recreation and Parks provides resource-based recreation while preserving, interpreting, and restoring natural and cultural resources. The division operates the Florida Park System, which currently consists of 161 park units representing more than 700,000 acres which hosts more than 18 million visitors annually.<sup>62</sup> Last year, as reported by the department, there were 19.5 million visitors to Florida's state parks. These areas contain some of the most outstanding examples of Florida's natural and cultural heritage. The division also administers the Florida Recreational Development Assistance Program (FRDAP), a competitive grant program that provides financial assistance to local governments for development or acquisition of land for public outdoor recreational purposes.

On June 27, 2007, the Governor signed Executive Order 07-116 which directed the DEP's Division of Recreation and Parks to immediately charge only one-half of the admission fee to a state park to an active member of the Florida National Guard, their spouses and minor children upon presentation of a valid card that identifies the person as being an active member of the Florida National Guard or a spouse or child of such a member. One out of every four persons working in a state park is a volunteer. There are 80 state parks with active citizen support organizations.<sup>63</sup> The park service employs three FTE's to coordinate the activities of its volunteers and the citizen support organizations. The park system has the opportunity to outsource certain activities such as mowing and restroom maintenance.

- **Recreational assistance and local government** – FRDAP is a competitive grant program administered by the DEP that provides financial assistance to local governments for development or acquisition of land for public outdoor recreational purposes. All county governments and municipalities in Florida and other local governmental entities with the legal responsibility for the provision of outdoor recreational sites and facilities for the use and benefit of the public are eligible. The maximum grant request may not exceed \$200,000. The Land and Water Conservation Fund Program is another competitive grant program which provides grants for acquisition or development of land for public outdoor recreation use. This program is administered by the DEP on behalf of the U.S. Department of Interior's National Park Service.

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<sup>60</sup> *Memorandum of Understanding between the State of Florida, Fish and Wildlife Conservation Commission and the State of Florida, Department of Environmental Protection*, 2007.

<sup>61</sup> This is a 110-mile long conservation and recreation corridor spanning Putnam, Marion, Citrus, and Levy Counties in north central Florida.

<sup>62</sup> This figure is indicative based on data for visitors for FY 2005-06.

<sup>63</sup> Citizen support organizations are nonprofit entities operating under s. 501(c)(3) of the Internal Revenue Code.

*Performance Measures:*<sup>64</sup>

<b>Approved Performance Measures</b>	<b>Approved Standards FY 2005-06</b>	<b>Actual FY 2005-06</b>	<b>Approved Standards FY 2006-07</b>	<b>Actual FY 2006-07</b>	<b>Approved Standards FY 2007-08</b>
<b><i>Land Management</i></b>					
1. Percent of managed acres with invasive or undesirable species controlled	35%	35%	35%	25%	35%
2. Percent change in the number of acres designated as part of the statewide system of greenways and trails from those so designated in the previous year	1.5%	2.07%	1.5%	0.2%	1.5%
3. Number of acres designated as part of the statewide system of greenways and trails to date	719,927	768,093	763,762	769,603	775,218
<b><i>Recreational Assistance to Local Governments</i></b>					
4. Percent change in number of technical assists provided to local governments from those provided in the previous year	2%	2%	2%	31%	2%
<b><i>State Park Operations</i></b>					
5. Percent change in state park acres from the prior fiscal year	1%	1%	1%	-3.8%	1%
6. Percent change in the number of state parks acres restored or maintained in native state from the prior fiscal year	2%	-32%	2%	-17%	2%
7. Percent increase in the number of visitors from the prior fiscal year	1.3%	5%	1.3%	7.3%	1.3%
<b><i>Coastal and Aquatic Managed Areas</i></b>					
8. Total number of degraded acres in National Estuarine Research Reserves enhanced or restored	1,626	936	1,658	3,275	1,658

<sup>64</sup> Provided by the DEP and DEP's Final Long-Range Program Plan for FY 2007-08 through FY 2011-12

<b>Approved Performance Measures</b>	<b>Approved Standards FY 2005-06</b>	<b>Actual FY 2005-06</b>	<b>Approved Standards FY 2006-07</b>	<b>Actual FY 2006-07</b>	<b>Approved Standards FY 2007-08</b>
9. Percent change in the number of degraded areas in National Estuarine Research Reserves enhanced or restored from those enhanced or restored in the previous fiscal year	1%	-6%	1%	250%	1%
10. Percent change of managed lands infested by invasive plants	2.5%	0%	1%	17%	1%
11. Percent increase in number of visitors	3%	96%	3%	-0.74%	3%
12. Number of sea grass monitoring stations	255	270	274	192	274
13. Number of water quality monitoring stations	91	137	99	145	99
14. Number of vessel groundings investigated	94	175	101	88	101

*Findings:*

For performance measure #1, the percentage for controlling invasive plants fell in 2006-07 due in large part to a lack of manpower to address the problem. Weather conditions also played a part in being able to access the areas to control invasive plant species.

For performance measure #4, the technical recreational assistance provided to local governments is directly proportional to the amount of annual appropriations for grants to the local governments. The more money for grants, the greater the need for technical assistance.

Performance measure #7 tracks the attendance rates at state parks. The actual attendance at Florida's state parks spiked in FY 2006-07 with a record number of visitors to Florida's state parks. In years of heavy hurricane activity and other adverse weather events, attendance usually suffers. Indications from the department are that as of the end of December 2007, attendance at state parks may reach a record number of attendees for FY 2007-08.

Performance measures #5 and #9 pertain to the percent change in the number of state parks acres restored or maintained in native state from the prior fiscal year and the percent change in the number of degraded areas in National Estuarine Research Reserves enhanced or restored, respectively. These measures are directly tied to weather and weather events. In severe drought conditions, controlled burns have been limited. Mechanical treatment can be used, but it is often more expensive and less productive.

Florida's state parks have been recognized nationally twice as being the best state park system. Attendance at Florida's state parks broke the annual attendance record in FY 2006-07 and indications are that attendance will be even higher in FY 2007-08. The department hosts many activities year around in the park such as battle reenactments, native American festivals, art shows, and ranger-led tours. According the



department, there are more than 60 events in Florida's state parks from Pensacola to Key West to encourage citizen participation.<sup>65</sup>

The state park system has historically been a resource for the enjoyment and use by Florida residents and visitors. As such, fees have remained low and relatively unchanged. Section 258.014, F.S., provides the Division of Parks and Recreation with the power to charge reasonable fees, rentals or charges for the use or operation of facilities and concessions in state parks. Rule 62D-2.014, F.A.C., provides that user fees at state parks become effective after they are advertised in a general statewide news release, and, if requested, reviewed at a public hearing, and approved in writing by the Secretary of the Department. This rule also allows the division to waive admission fees for certain persons such as any government agency and for salesmen, tradesmen or other individuals who will benefit the park or state park system. Further, fees are waived for:

- Children under six years of age.
- Patients of Florida Mental Institutions and clients of the Department of Juvenile Justice and the Department of Children and Family Services.
- Florida school groups.
- Division employees and their families.

The division also offers a 50 percent discount on base camping fees to Florida citizens who are at least 65 years of age or Florida citizens possessing a current Social Security disability award certificate or proof of a 100 percent disability award from the Federal government or other acceptable proof of 100 percent disability.

Recently, the Governor signed Executive Order 07-116 which indefinitely lowered admission to state parks for the Florida National Guard members and their families to half price.

According to information received from the department, of the 161 state parks, only 27 state parks operated at a profit for FY 2006-07. The remaining parks operated at a loss in FY 2006-07 ranging from a low of \$1,291 to a high of \$626,813. In order to offset these losses, documentary stamp revenue is transferred from the Land Acquisition Trust Fund to cover program costs. In FY 2006-07, the transfer amount was \$45.5 million, or approximately 54 percent of the program's costs.

For FY 2006-07, park fees supported approximately 46 percent of the costs. Total expenditures and encumbrances for the State Park Trust Fund were \$83.8 million. Documentary stamp revenue from the Land Acquisition Trust Fund supported \$46.5 million of the expenditures.

Most of the state parks are feeling the effects of rising energy costs. This affects the department's ability to maintain and operate the parks with existing revenues.

The department is also experiencing difficulty in restoring and maintaining state parks and in controlling invasive species on greenways and trails and in coastal and aquatic areas. The reasons why the performance measures have not been met in these areas are varied—natural disasters, unexpected invasive plant infestations, and lack of staff.

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<sup>65</sup> <http://www.floridastateparks.org/>

Florida currently is the lead agency for the Florida Coastal Management Program. This program was at one time assigned to the Department of Community Affairs. If the agency were abolished, this function could be transferred to another agency. If no other agency were assigned to accept this responsibility (and NOAA approval is generally required), then the state could lose approximately \$2.7 million annually in federal funds from NOAA.<sup>66</sup>

*Recommendation:* It is recommended that the Recreation and Parks Program be retained. Funding remains an issue for state parks. Park fees could be increased, however, significantly increased daily entrance fees would impact the lower income visitors to the parks systems. Camping fees could be increased, particularly for those campers in motor homes or campers that use electrical hookups and waste disposal facilities. The increased fees would offset the rising energy costs that have negatively impacted the parks operations. Another option to increase efficiency and reduce costs is to close those parks where attendance is very low and the costs to maintain are very high. Due to staff shortages in the state parks, the DEP should continue to pursue outsourcing activities such as mowing and restroom maintenance.

## 2. State Lands

*Funding:* State Lands Budget<sup>67</sup>

	<i>FY 2005-06</i>	<i>FY 2006-07*</i>	<i>FY 2007-08*</i>
<i>Total Budget</i>	\$848,876,481	\$1,963,403,305	\$1,100,618,080
<i>FTE's</i>	178.5	177.5	177.5

\*The dramatic increase in the state lands budget reflects the large cash transfers in the General Appropriations Act to the agency's operating budget for such programs as Everglades Restoration, Lake Okeechobee Restoration, water projects, Babcock Ranch, etc.

Affected trust funds: Conservation and Recreation Lands Trust Fund, Florida Forever Trust Fund, Florida Preservation 2000 Trust Fund,<sup>68</sup> Grants and Donations Trust Fund, Internal Improvement Trust Fund, Invasive Plant Control Trust Fund, Land Acquisition Trust Fund, Save Our Everglades Trust Fund, and the Water Management Lands Trust Fund.<sup>69</sup>

*Program Purpose:* To acquire, administer, and dispose of state lands owned by the Board of Trustees of the Internal Improvement Trust Fund; to administer, manage, and maintain the records of all such lands; to administer and maintain the state geodetic survey requirements; to identify and set ordinary and mean high water boundaries for purposes of sovereignty and land title; and to control aquatic and invasive plant species.

*Program Summary:* Through the Division of State Lands, this program provides three major services: invasive plant control, land administration, and land management. The division supports the state's land buying under such efforts as the Florida Forever Act, Conservation and Recreation Lands (CARL) program, and the Everglades Restoration program. The division obtains land appraisals; evaluates land

<sup>66</sup> Department of Environmental Protection Florida Government Accountability Act Agency Response, December 2006.

<sup>67</sup> Department of Environmental Protection

<sup>68</sup> As indicated in the DEP's Trust Fund Status and Activity Reports, there is no activity in this fund.

<sup>69</sup> DEP's Trust Fund Status and Activity Reports, Sept. 2007

acquisitions; handles land exchanges and negotiations; acquires lands; leases land to state, federal, and local agencies; and determines land and water boundaries. The division also works to control noxious aquatic and upland plants.

- ***Invasive Plant Control*** – identify and manage Florida’s invasive plant species to reduce the threat to Florida’s public lands and water bodies. The division receives a federal grant from the U.S. Army Corps of Engineers to provide aquatic plant control activities for navigation purposes. The appropriation for this grant for FY 2007-08 is \$800,003.<sup>70</sup> This grant is earmarked for federal navigation projects and currently can only be used for activities on the St. Johns River from Jacksonville to Sanford, Crystal River, Kissimmee River, and Withlacoochee River. The DEP receives funding for aquatic plant management for sovereignty state lands. To this extent, invasive plants are managed if it is sovereignty submerged land and the land is available to the public (i.e., public boat ramps and state-owned lands). The division was appropriated \$39.2 million for FY 2007-08 to manage both aquatic and upland exotic and invasive species.
- ***Land Administration*** – perform Florida’s land acquisition and real estate functions by evaluating new land acquisition proposals, boundary revisions, and ranking of Florida Forever projects. Maintain a GIS database to identify the major conservation lands currently protected and lands proposed for acquisition. Conduct land appraisals, prepare surveys and maps for negotiations, and perform acquisition closing and closings for preservation and non-preservation land use.
- ***Land Management*** – Florida law requires all land owned by the Board of Trustees of the Internal Improvement Trust Fund to be managed in a manner that will provide the greatest combination of benefits to the people of the state. Process all leases and easement contractual instruments for both uplands and submerged lands for public and private uses. Any unmanaged state-owned land is assessed for revenue-generating potential through either surplusizing the land for sale or bringing it under lease. Any unmanaged state-owned land identified as being of no further use to the public is evaluated and sold if appropriate.

The division also prepares the Land Acquisition Strategy Report for the federal government. This report was authorized by the Interior Congressional Appropriations Committee in response to an April 2000 U.S. GAO report to Congress entitled, “*A Land Acquisition Plan Would Help Identify Lands that Need to be Acquired.*” The GAO report recommended that Congress require the Secretary of the Interior, as Chairperson of the Task Force, to develop and annually update a land acquisition plan to coordinate the Land Acquisition Programs of the Federal and state agencies participating in the Everglades restoration activities.

In 2000, the DEP established a partnership with the federal government to track the status of ongoing and completed land acquisitions projects. Under the partnership, the DEP was asked to take the lead in the effort to develop this report in coordination with the Task Force and other local, state, regional, and federal agencies. This is the only report in Florida done on a regional basis and only covers the area of the state within the boundaries of the South Florida Water Management District, specifically, Everglades restoration efforts. This report is more for the federal government than the state. If DEP was unable to support this effort and serve as the lead agency, the Secretary of the Interior and the federal government would be

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<sup>70</sup> DEP Agency Sunset Review spreadsheet of federal grants, October 18, 2007.

unable to meet their statutory responsibilities to Congress. The state receives approximately \$34,000 annually to do the report and is matched in-kind from the state.

*Performance Measures:*<sup>71</sup>

<b>Approved Performance Measures</b>	<b>Approved Standards FY 2005-06</b>	<b>Actual FY 2005-06</b>	<b>Approved Standards FY 2006-07</b>	<b>Actual FY 2006-07</b>	<b>Approved Standards FY 2007-08</b>
<b><i>Invasive Plant Control</i></b>					
1. Percent of Florida's Public water bodies in which invasive aquatic plants are under maintenance control	97%	98%	97%	98%	97%
<b><i>Land Administration</i></b>					
2. Percent of parcels closed within agreed upon timeframe	75%	86%	75%	68%	75%
3. Purchase price as a percent of approved value for parcels	92%	79%	92%	80%	92%
4. Annual percent increase in acreage of land (or interests therein) on the Florida Forever List	6%	-1%	6%	-.25%	6%
<b><i>Land Management</i></b>					
5. Percent of uplands instrument requests/applications completed within 12 months as compared to those received timely	95%	77%	95%	66%	95%
6. Percent of submerged lands lease instruments completed within 12 months as compared to those received	95%	127%	95%	116%	95%
7. Percent of asset management instrument requests/applications completed within 12 months as compared to those received	100%	88%	100%	115%	

***Findings:***

Performance measure #4 pertains to the annual percent increase in acreage of on the Florida Forever list. The department's target number of additional Florida Forever acres to be acquired annually is 6 percent. This goal is based on what has been the historic annual appropriation of at least \$300 million in bonds or cash. Factors such as real estate market conditions and any potential change to annual funding levels can significantly affect this goal.

Performance measure #5 pertains to the percent of upland instrument applications completed within 12 months. This measure has not matched the desired standard because persons outside the agency are not meeting the same deadlines that the department must statutorily meet. For example, customers may take 6 months to a year to return completed documents to the department. The agency's deadline is 30 days.

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<sup>71</sup> Provided by the DEP and DEP's Final Long-Range Program Plan for FY 2007-08 through FY 2011-12

OPPAGA has looked at various programs within the department as part of its review pursuant to the Government Accountability Act and has issued a series of memorandums regarding certain specified programs. On October 31, 2007, OPPAGA issued a memo to the Joint Legislative Sunset Committee on the Division of State Lands.

Also, the Florida Senate Environmental Preservation Committee recently completed Interim Project Report 2008-213, *Land Acquisition in Florida*, which specifically addresses the activities associated with the Florida Forever Program and evaluates the state's progress and make recommendations on the potential future of land acquisition efforts. That report concluded that the success of Florida's land acquisition program is unquestioned and that the Preservation 2000 Program and the Florida Forever Program have been and still are national models for environmental protection. The report provided three options for the Legislature to consider:

Option 1 — Allow the Florida Forever land acquisition program to end and shift the acquisition of conservation lands to federal, local, or private efforts.

Option 2 — Modify the existing Florida Forever Program to include:

- Reworking the entire acquisition list.
- Developing specific targets for each conservation measure so that the acquisition efforts can be tracked and goals reached.
- Creating additional oversight in the acquisition of mega-parcels.
- Limiting the Division of State Lands ability to enter into any contractual agreements with property owners without prior legislative appropriation or authorization.
- Prohibiting the acquisition of or commitment to purchase lands before adequate legislative authorization or appropriation are provided.
- Increasing the emphasis on using less-than-fee alternatives.
- Considering the effects of sea level rise on conservation lands currently in state ownership and for any future acquisitions that are located at or below 5 feet above sea level.
- Pursuing a sustained funding source for land management.
- Requiring managing agencies to take advantage of capital improvement dollars available during the time of acquisition.
- Expanding the land management options to allow for revenue opportunities to pay for the management of the land while not interfering with the intended purpose of the acquisition.
- Developing a database system to track all acquisition activity associated with Florida Forever.

Option 3 — Create an entirely new conservation lands program.

The interim report was presented to the Senate Environmental Preservation Committee on February 7, 2008. While no decision was made as to a recommendation on the above options, the committee expressed a strong interest in *Option 2*.

There have been concerns expressed from members of the Legislature concerning the need to have a consolidated list of all state-owned lands that indicates which parcels are used for conservation purposes and which parcels can be surplussed and used for other public benefit purposes. The Division of State Lands maintains the Board of Trustees Land Database System (BTLDS) which is a record of acquisitions, disposals and exchanges of land owned by the state for which title vests with the Board of Trustees. Recently, as a result of ongoing audit criticisms by the Auditor General, the department has reconciled the

BTLDS with FLAIR (the official state of Florida accounting records) for the first time in 20 years and, therefore, resolved the audit criticisms.

Section 253.03(8), F.S., directs the Board of Trustees to prepare, using tax roll data provided by the Department of Revenue, an annual inventory of all-publicly owned lands within the state. That inventory shall include all lands owned by any unit of state government or local government; by the Federal Government, to the greatest extent possible; and by any other public entity. The Board of Trustees shall submit a summary report of the inventory and a list of major discrepancies between the inventory and the tax roll data to the President of the Senate and the Speaker of the House of Representatives on or before March 1 of each year. To fulfill its statutory obligation, the Division of State Lands has contracted with the Public Lands Research Program, Florida Resources and Environmental Analysis Center at Florida State University to produce the inventory of all publicly owned lands in Florida. A report was issued on March 1, 2007, and the 2008 report is forthcoming. As a result, the department has met its statutory responsibilities as provided in s. 253.08, F.S.

A list of surplus lands owned by the Board of Trustees is available on the department's website.

The Florida Natural Areas Inventory (FNAI) maintains a list of conservation lands in Florida. Their mission is to collect, interpret, and disseminate ecological information critical to the conservation of Florida's biological diversity.<sup>72</sup>

It has been suggested by OPPAGA and other that the Florida Forever land acquisition process should be consolidated under one agency such as the Division of State Lands. Currently, Florida Forever funds are used to purchase lands by other entities such as the water management districts and other state and local governments. However, more study may be needed in order to implement such a suggestion.

Three state agencies primarily have land management responsibilities: the DEP, the Department of Agriculture and Consumer Services, and the Fish and Wildlife Conservation Commission. Each of these agencies manages conservation lands differently based on its legislatively mandated responsibilities. The Acquisition and Restoration Council, administratively housed in the DEP, is responsible for recommending which state agency should become the primary manager of newly acquired state lands.<sup>73</sup>

Section 253.034, F.S., requires that conservation land managers provide public access to natural resource-based recreation where feasible and consistent with the goals of protection and conservation of natural resources. Most state conservation land is open to the public for a wide variety of recreational activities. However, some state lands are not open to the public. The reasons vary: some lands are being developed for future use; protection of infrastructure or sensitive environments; ensuring public safety; and some areas are not easily accessible by car or foot.<sup>74</sup>

*Recommendation:* It is recommended that the State Lands Program be retained. Based on the findings above, it is recommended that the Legislature consider *Option 2* contained in the Environmental Preservation Committee's Interim Report 2008-213 as it relates the Florida's land buying activities and the

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<sup>72</sup> <http://www.fnai.org/>

<sup>73</sup> OPPAGA Sunset Memorandum on Conservation Land Management Options for Legislative Consideration, December 20, 2007.

<sup>74</sup> *Id.*

Florida Forever Program. That option includes modifying the Florida Forever Program to include certain specified activities.

## D. Planning and Management

*Program Purpose:* To provide the direction and goals of the Division of Administrative Services, the Division of Resource Assessment and Management, and the Office of Strategic Projects and Planning. Funding for this program is primarily through the General Revenue Fund, Administrative Trust Fund, Ecosystem Management and Restoration Trust Fund, Grants and Donations Trust Fund, Internal Improvement Trust Fund, Invasive Plant Control Trust Fund, and the Air Pollution Control Trust Fund.<sup>75</sup>

### 1. Executive Direction and Administrative Services

*Funding:* Executive Direction and Administrative Services Budget<sup>76</sup>

	<i>FY 2005-06</i>	<i>FY 2006-07</i>	<i>FY 2007-08</i>
<i>Total Budget</i>	\$32,550,511	\$32,022,581	\$32,511,476
<i>FTE's</i>	312.5	313.5	309.5

Affected trust funds: Ecosystem Management and Restoration Trust Fund, Grants and Donations Trust Fund, Inland Protection Trust Fund, and the Internal Improvement Trust Fund.

- The **Division of Administrative Services** is responsible for the department's personnel, grants, budget, accounting, safety program, procurement, mailroom, printing, and other support services. Administrative Services contains four bureaus: Personnel Services, Finance and Accounting, Budget & Planning, and General Services.
- The **Office of Strategic Projects and Planning** provides coordination of the department's strategic priority-setting and planning activities; formulation of options and analysis of potential outcomes of public policy alternatives; assessment of program performance and environmental outcomes through the use of metrics and indicators; and analysis of the "business" of DEP programs to improve efficiency, reduce costs, and gather actionable requirements for enterprise information system development. Currently, this office is staffing the Governor's Climate Action Team under the leadership of Secretary Sole.
- **Legislative and Government Affairs** prepares legislative proposals for the department, as well as any planning, policy and budgetary analyses or recommendations on legislative bills. These are used to inform the members of the Legislature and legislative committees, the Governor's office, and other interested parties about the department's position on legislative issues, and assist policy makers and the public in understanding the proposed legislation as it affects the department and the environment.

<sup>75</sup> DEP's Trust Fund Status and Activity Reports, Sept. 2007

<sup>76</sup> Department of Environmental Protection

- The **Office of Intergovernmental Programs** is responsible for three separate programs: the Clearinghouse Program, the Comprehensive Plan and the Outer Continental Shelf Program.
  - **The Clearinghouse Program:** As provided in s. 403.061(40), F.S., the department serves as the state's single point of contact for performing the responsibilities described in Presidential Executive Order 12372, including the administration and operation of the Florida State Clearinghouse. This program provides a single point of entry for reviews of federal proposals that impact the state. The Clearinghouse is responsible for coordinating interagency reviews on federal and federally funded projects and provides environmental feasibility statements regarding transportation projects. The reviews determine and comment on whether the proposal or proposed action is in accordance with state plans. The clearinghouse serves 13 other state agencies as well.
  - **The Comprehensive Plan:** Reviews strategic regional policy plans, amendments, evaluation and appraisal reports; provides input on specific growth management policy issues; and coordinates the department's involvement in Florida's Areas of Critical State Concern.
  - **Outer Continental Shelf:** Assesses offshore activities and proposed rules and laws that affect these activities. This is the state's single point-of-contact for all oil and gas related matters; and is the contact for EPA's Gulf of Mexico program — a network of state and federal agencies, citizens, businesses, industry and non-profits committed to protecting resources in the Gulf.
- The **Office of the General Counsel** focuses on Florida's environmental priorities, such as restoring the Everglades; improving air quality; restoring and protecting the water quality in Florida's springs, lakes, rivers and coastal waters; conserving environmentally sensitive lands; and providing citizens and visitors with varied recreational opportunities.<sup>77</sup> All of the attorneys employed by the Office of the General Counsel are located in Tallahassee.
- As provided in s. 20.055, F.S., an **Office of Inspector General (OIG)** must be established in each state agency to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government. The inspector general must:
  - Advise in the development of performance measures, standards, and procedures for the evaluation of state agency programs.
  - Assess the reliability and validity of the information provided by the agency on performance measures and standards, and make recommendations for improvement.
  - Review the actions taken by the agency to improve program performance and meet program standards and make recommendations for improvement, if necessary.
  - Provide direction for, supervise, and coordinate audits, investigations, and management reviews relating to the programs and operations of the agency.
  - Conduct, supervise, or coordinate other activities carried out or financed by the agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations.

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<sup>77</sup> <http://www.dep.state.fl.us/legal/>



- Keep the agency head informed concerning fraud, abuses, and deficiencies relating to programs and operations administered or financed by the agency and recommend corrective actions, if necessary.
  - Ensure effective coordination and cooperation between the Auditor General, federal auditors, and other governmental bodies with a view toward avoiding duplication.
  - Review, as appropriate, rules relating to the programs and operations of the agency and make recommendations concerning their impact.
  - Ensure that an appropriate balance is maintained between audit, investigative, and other accountability activities.<sup>78</sup>
- The **Office of Communications** is comprised of Office of Citizen Services, the Press Office, Office of Environmental Education, and the Marketing Office.
  - **Citizens Services** — develops, manages, and controls routing procedures for correspondence addressed to and signed by the Governor and executive staff. This office also researches and assembles information for constituents.
  - **Press Office** — serves as the primary contact for the news media regarding the department's programs and events, providing accurate and timely information to the public through print and broadcast mediums.
  - **Environmental Education** — assists and advises the department's divisions and districts, and the public through the development and distribution of environmentally-related educational materials, most notably through the Learning in Florida's Environment (LIFE) program. The LIFE program takes seventh graders outside the classroom to learn about Florida's natural resources.
  - **Marketing Office** — communicates the department's message by creating innovative and original design concepts for print and electronic campaigns as well as through speech writing. Materials produced include newsletters, invitations, brochures, displays, flyers and other marketing collateral.
- The **Office of Cabinet Affairs** serves as DEP's clearinghouse for all cabinet agenda items for presentation to the Governor and Cabinet sitting as the Board of Trustees for the Internal Improvement Trust Fund and the Power Plant Siting Board. This office also coordinates with the DEP divisions, district offices, and water management districts in the preparation of cabinet agenda items pertaining to the acquisition, administration, and disposition and use of state lands.
- The **Office of Ecosystem Projects** coordinates and assists with the policy development and implementation of a variety of ecosystem restoration projects in South Florida including the Comprehensive Everglades Restoration Plan, *Acceler8*, Everglades Forever Act, Lake Okeechobee Protection Program, Lake Okeechobee Estuary Recovery Program, Northern Everglades Program, and the Save Our Everglades Trust Fund. Restoration of the South Florida Ecosystem requires the cooperation and commitment of multiple parties including state, federal, tribal, and dozens of non-governmental organizations. This office interacts and communicates with all the restoration parties

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<sup>78</sup> s. 20.055(2), F.S.

and ensures that the goals of the state are protected and incorporated into restoration activities. Further, this office's role is primarily policy; the technical aspects of restoration activities are carried out by the department's environmental resources and restoration program areas.<sup>79</sup>

*Performance Measures:*<sup>80</sup>

<b>Approved Performance Measures</b>	<b>Approved Standards FY 2005-06</b>	<b>Actual FY 2005-06</b>	<b>Approved Standards FY 2006-07</b>	<b>Actual FY 2006-07</b>	<b>Approved Standards FY 2007-08</b>
<b><i>Executive Direction and Support Services</i></b>					
1. Administrative costs as a percent of total agency positions	1.4%	1.54%	1.4%	1.04%	1.4%
2. Administrative positions as a percent of total agency positions	9.5%	8.68%	9.5%	8.68%	9.5%
3. Percent of projects completed timely by the Office of Strategic Projects and Planning	90%	94%	90%	99%	90%
4. Percent contacts resolved (answered or appropriately referred) by the Office of Strategic Projects and Planning	95%	98%	95%	99%	95%
5. Percent of customer service requests resolved within 3 days by the Office of Citizen Services	85%	88.5%	85%	84%	85%
6. Percent of annual Florida Coastal Management program statutory update requests filed with National Oceanic and Atmospheric Administration within 6 months after Florida statutes revised	100%	100%	100%	100%	100%
7. Submission of annual grant application to National Oceanic and Atmospheric Administration with statutory time frame (yes or no)	Yes	Yes	Yes	Yes	Yes
8. Percent of required subgrant site visits conducted (Office of Intergovernmental Programs)	100%	100%	100%	100%	100%

<sup>79</sup> Presentation before the Joint Sunset Committee Staff on September 25, 2007.

<sup>80</sup> Provided by the DEP and DEP's Final Long-Range Program Plan for FY 2007-08 through FY 2011-12

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<b>Approved Performance Measures</b>	<b>Approved Standards FY 2005-06</b>	<b>Actual FY 2005-06</b>	<b>Approved Standards FY 2006-07</b>	<b>Actual FY 2006-07</b>	<b>Approved Standards FY 2007-08</b>
9. Percent of legal cases resolved by the Office of General Counsel	45%	69%	50%	59%	50%
10. Percent of mentors participating over one year (Office of Communication)	10%	58.7%	10%	3%	10%
11. Percent of legislative bills filed per legislative session requiring intervention by lobbying team, due to relevance to dept.	16%	21%	16%	18%	16%
12. Percent of Inspector General recommendations agreed to by management	95%	100%	96%	100%	95%
13. Percent of land acquired to implement the Comprehensive Everglades Restoration Plan	N/A-New Measure	54%	57%	55%	57%
14. Percent of press requests completed by reporter deadline	100%	100%	100%	100%	100%
15. Percent of Cabinet agenda items passed	83%	85%	83%	86%	83%
16. Percent of proposed agenda items that reach Cabinet agenda	95%	95%	95%	95%	95%
17. Percent of invoices paid timely as per statutory guidelines	96%	98.62%	96%	97.83%	96%
18. Percent of employee relations issues successfully handled	75%	100%	75%	99.7%	95%
19. Percent of all budget amendment requests processed and submitted within 5 days of receipt	90%	91.5%	90%	94%	90%
20. Percent of single sources processed within 3 workdays of receipt of complete single source justification from program area	90%	93%	90%	100%	90%
21. Percent of property inventories received from divisions/districts that are reconciled by the close of the fiscal year	100%	100%	100%	100%	100%

*Findings:*

Performance measure #10 relates to a goal for mentoring which is an initiative common to all state agencies. An effort is ongoing in the department to increase participation in this effort by employees in order to reach the stated 10 percent goal.

Executive direction and administrative services provides overall support to the agency and provides important interagency contact and coordination with not only state agencies, but also several federal entities. This program maintains communication with the persons needing services from the department and also the general public through various outreach programs, environmental education, maintenance of DEP's website, and other public communications.

Other important functions are administratively attached to this program such as the Office of the General Counsel, the Inspector General, and the Office of Cabinet Affairs.

*Recommendation:* Based on the above, it is recommended that the Executive Direction and Administrative Services program be retained. Contingent on the Legislature's decision on creating an independent entity for energy policy, the role of the Office of Strategic Projects and Planning should be clarified.

## 2. Resource Assessment and Management

*Funding:* Resource Assessment and Management Budget.<sup>81</sup>

	<i>FY 2005-06</i>	<i>FY 2006-07</i>	<i>FY 2007-08</i>
<i>Total Budget</i>	\$23,743,873	\$26,529,966	\$25,542,956
<i>FTE's</i>	189	189	195

Affected trust funds: Environmental Laboratory Trust Fund, Grants and Donations Trust Fund, Minerals Trust Fund, Water Quality Assurance Trust Fund, and the Water Quality Assurance Trust Fund.<sup>82</sup>

*Program Purpose:* To ensure maximum environmental protection through applied research and the effective integration and use of agency data. This program is comprised of three entities: Florida Geological Survey, Laboratory Services, and Technology and Information Systems. These entities provide support services to the department and to federal, state, and local agencies.

- **The Florida Geological Survey (FGS)** has a budget for FY 2007-08 of \$3,976,866 and 39 FTE positions. The FGS provides information and interpretive data dissemination necessary to support the need for geology and earth science related information to governmental agencies, land-use planners, environmental and engineering consultants, mineral owners and exploration companies, industry, and the public.

The FGS conducts applied geosciences research to meet the needs of the department and the public for sound natural resource conservation and defensible environmental regulation.

The FGS is the only program in the state that collects, interprets, and stores geologic data used by government agencies, industry, consultants, and the public.

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<sup>81</sup> Department of Environmental Protection

<sup>82</sup> DEP's Trust Fund Status and Activity Reports, Sept. 2007

The FGS receives funding from the federal STATEMAP Program, which is a component of the National Cooperative Geologic Mapping Program. The purpose of this program is to conduct detailed geologic mapping in the state. These maps are helpful in identifying where increased development would pose a threat to the aquifer. The maps have contributed to the understanding of the hydrogeologic characteristics of the Floridan aquifer.

The FGS works in partnership with the U.S. Geological Survey (USGS) to provide data for a national geologic mapping database. Federal law (PL 106-148) provides that State Geological Surveys are the only entities which are allowed to apply for STATEMAP funds. If the FGS were abolished, the USGS would likely ask that it be reinstated since no other entity within the state would have access to the federal survey funds. As provided in federal law, STATEMAP funds are matched by the state on a 50/50 basis. Also, if abolished, moneys coming to the state for the offshore sand mapping program that DEP cooperates with the Minerals Management Service would be diverted to other states which have geological survey programs.

- **Laboratory Services** has a budget for FY 2007-08 of \$9,496,642 and 87 FTE positions. Laboratory services provide biological and chemical laboratory support to department programs, the water management districts, and other state and local agencies.

The laboratory also provides other kinds of technical support, including specialized field sampling, scientific study design, statistical and narrative interpretation of environmental data, and investigations of terrorist threats. The laboratory services is also responsible for managing the department's quality assurance program for water, waste, and resource management programs, which is a prerequisite for receipt of funding from the EPA.<sup>83</sup>

- The **Office of Technology and Information Services** has a budget of \$12,069,448 for FY 2007-08 and 68 FTE position. This office provides strategic support and policy coordination for the use of Information Technology Resources (ITR) within the department. Working closely with the department's regulatory district offices, the department's divisions and other organizations within the department, the office supports a common networking infrastructure, mail system and corporate business applications suite. Additional services provided are: help desk, business resumption planning, internet/intranet programming, server management, hardware/software procurement assistance, Oracle DataBase administration and geographic information systems support.

*Performance Measures:*<sup>84</sup>

Approved Performance Measures	Approved Standards FY 2005-06	Actual FY 2005-06	Approved Standards FY 2006-07	Actual FY 2006-07	Approved Standards FY 2007-08
<b>Florida Geological Survey</b>					
1. Percent of oil and gas facilities in compliance with statutory requirements	94.2%	99%	94.3%	99.6%	94.3%

<sup>83</sup> Committee on General Government Appropriations FY 2007-08 Resource Book, pg. 43.

<sup>84</sup> Provided by the DEP and DEP's Final Long-Range Program Plan for FY 2007-08 through FY 2011-12

*Department of Environmental Preservation  
Agency Sunset Review Interim Report*

<b>Approved Performance Measures</b>	<b>Approved Standards FY 2005-06</b>	<b>Actual FY 2005-06</b>	<b>Approved Standards FY 2006-07</b>	<b>Actual FY 2006-07</b>	<b>Approved Standards FY 2007-08</b>
2. Net oil and saltwater spilled as a percent of total liquids produces	0.0025%	0.005529%	0.0025%	0.0029%	0.0025%
<b>Laboratory Services</b>					
3. Average cost per analysis	\$43	\$34.82	\$43	\$31.53	\$40
4. Average no. of hours expended per full-time equivalent (FTE) in analyzing or interpreting environmental data	500	1,819	500	1,775	1,800
5. No. of reports and publications with scientific findings and management options for reducing exposure of humans and wildlife to ingested mercury	10	18	10	2	10
6. No. of reports and publications with scientific findings as to the amounts, sources and deposition of fixed nitrogen compounds (i.e., nitrates and ammonia) as may influence the water quality of Tampa Bay	5	9	5	12	5
<b>Information Technology</b>					
7. Number of terabytes transported/Bureau of Information Systems budget expended	155/\$1	54.6/\$1	83.8/\$1	89.7/\$1	83.5/\$1

*Findings:*

Performance measure #2 for net oil and saltwater spilled is a reflection of the fact that such spills are infrequent and unpredictable accidents. The program measures the spills; however, the spills are not controlled by the program.

The Florida Geological Survey often cooperates with the U.S. Geological Survey and the U.S. Department of Interior's Minerals Management Service. The Florida Geological Survey receives federal funding to participate in the STATEMAP Program. This program is a component of the National Cooperative Geologic Mapping Program which conducts detailed geologic mapping in the state. This constitutes an important partnership with the federal government in that it contributes to the development of a national geologic mapping database. The federal government alone does not have the resources to conduct these activities in Florida. If abolished, the benefits of this partnership would be lost.<sup>85</sup>

<sup>85</sup> Department of Environmental Protection Florida Government Accountability Act Agency Report, December 2006.

The department's laboratory services performs services necessary for the department to implement the TMDL program that is required by the federal Clean Water Act. The department receives federal grant funding (CFDA No. 66.511) to obtain information regarding mercury, nitrogen, and phosphorus loads to waterbodies statewide.<sup>86</sup> The DEP's laboratory services provide lab analyses statewide using a consistent methodology. Outsourcing many of the lab's functions could be done; however, there has to be oversight to assure that the analyses are done consistently and uniformly. It is not known whether such outsourcing would result in any significant efficiencies or cost savings to the department.

*Recommendation:* Based on the findings above, it is recommended that the Resource Assessment and Management Program be retained. Deletion of this program would jeopardize an important relationship with the federal government for geologic mapping in Florida.

## E. Environmental Law Enforcement

*Funding:* Law Enforcement Budget<sup>87</sup>

	<i>FY 2005-06</i>	<i>FY 2006-07</i>	<i>FY 2007-08*</i>
<i>Total Budget</i>	\$25,224,794	\$25,431,447	\$32,630,226
<i>FTE's</i>	187.5	187.5	187.5

\*The increase in FY 2007-08 is attributable to an increase in the appropriations for emergency response.

Affected trust funds: Coastal Protection Trust Fund, Grants and Donations Trust Fund, Inland Protection Trust Fund, and the Land Acquisition Trust Fund.<sup>88</sup>

*General Program Purpose:* To protect people, the environment, and cultural and natural resources through enforcement, education, and public service.

*Program Summary:* The law enforcement program is responsible for statewide environmental resource law enforcement and providing basic law enforcement services to the state parks and greenways and trails. Activities include environmental education and enforcement; investigation of environmental resource crimes such as abandoned drums and waste tires, and illegal dredge and fill activities; and responding to natural disasters, civil unrest, hazardous material incidents and oil spills which threaten the environment.

- The **Florida Park Patrol** works to prevent crimes against persons, property, and resources on state lands to ensure that visitors are safe. Officers provide general law enforcement services on state-owned properties managed by the department. This includes crowd and traffic control during major park events and assistance through mutual aid agreements during natural disasters. Officers also participate on the Environmental Response Team. Volunteers and partnerships with park service personnel are used to provide education and outreach to the public, and a crime watch program for state parks.<sup>89</sup>

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<sup>86</sup> Id.

<sup>87</sup> Department of Environmental Protection

<sup>88</sup> DEP's Trust Fund Status and Activity Reports, Sept. 2007

<sup>89</sup> Id. at pg. 29.

The park patrol has 94 FTE positions, 91<sup>90</sup> of whom are sworn officers to handle crowd and traffic control and disasters in the 161 state parks, as well as the state's greenways and coastal areas.

- The mission of the **Bureau of Emergency Response** is to respond to any incident or situation that represents an imminent hazard, or threat of a hazard, to the public health, welfare and safety, or the environment, and to protect the public safety and the environment through planning and organization of resources. The goal of the response is to eliminate the emergency situation. Response activities are provided 24 hours a day. Response activities include analyzing the spill or hazard, determining the required response, coordinating any necessary cleanup with the responsible party, and initiating cost recovery for the cleanup either from the responsible party or the federal government. Emergency responders provide technical assistance, preparedness for domestic terrorism, and forensic collection and analysis of samples for criminal investigations. The emergency responders participate on the Environmental Response Team. This unit has 28 FTE positions, 22 of whom are field responders trained handle advanced level A chemical incidents and domestic terrorism.<sup>91</sup>
- The purpose of **Environmental Investigations** is to identify and seek prosecution for those offenders who repeatedly or flagrantly violate environmental or resource law. Agency investigators are fully constituted law enforcement officers with statewide authority. These investigators conduct criminal investigations of individuals or companies that intentionally cause harm to the health and safety of the citizens and the environment by illegally transporting, storing, or disposing of hazardous waste, solid waste, bio-medical waste, or chemicals within the state of Florida. At the conclusion of the investigation, the case is turned over to the State Attorneys Office for possible prosecution. Investigators also participate on the Environmental Response Team.<sup>92</sup> This unit has 65.5 FTE positions, 45 of whom are sworn special agents to handle regulatory violations and work with the EPA.

*Performance Measures:*<sup>93</sup>

Approved Performance Measures	Approved Standards FY 2005-06	Actual FY 2005-06	Approved Standards FY 2006-07	Actual FY 2006-07	Approved Standards FY 2007-08
<b><i>Environmental Investigations</i></b>					
1. Percent change from previous year of no. of marine facilities participating in clean vessel and clean marina programs	12%	8.8%	12%	9%	8%
2. Ratio of clean facilities to total no. of known marinas and boatyards	440:2007	469:2007	440:2007	511:2007	542:2007

<sup>90</sup> Presentation to the Joint Sunset Committee staff, September 2007. The remainder of the positions are administrative.

<sup>91</sup> Id.

<sup>92</sup> Id. at pg. 28.

<sup>93</sup> Provided by the DEP and DEP's Final Long-Range Program Plan for FY 2007-08 through FY 2011-12



<b>Approved Performance Measures</b>	<b>Approved Standards FY 2005-06</b>	<b>Actual FY 2005-06</b>	<b>Approved Standards FY 2006-07</b>	<b>Actual FY 2006-07</b>	<b>Approved Standards FY 2007-08</b>
3. Ratio of incidences of environmental law violations to 100,000 Florida pop.	2.18:100,000	2.45:100,000	2.18:100,000	3.66:100,000	2.18:100,000
<b><i>Patrol on State Lands</i></b>					
4. Ratio of criminal incidences within the parks to 100,000 Florida park visitors	30:100,000	30:100,000	30:100,000	31:100,000	30:100,000
<b><i>Emergency Response</i></b>					
5. Ratio of incidences of pollutant discharges to 100,000 Florida pop.	17:100,000	11:100,000	17:100,000	11:100,000	17:100,000

***Findings:***

The department is actively increasing its efforts to encourage participation in the clean vessel and clean marina programs by expanding outreach and marketing efforts to targeted marine facilities to disseminate information about the benefits of participating in the program. (Performance measure #1)

As indicated by performance measures #3 and #4, the incidences of crime and of environmental law violations is low.

The Division of Law Enforcement provides patrols in state parks, conducts environmental investigations, and participates in emergency response. Currently, no other law enforcement entity performs these functions as part of their missions. From time to time, the division may call upon local law enforcement entities for assistance; however, they do not have the expertise to enforce environmental laws pertaining to illegal dumping of hazardous materials or waste and the transportation or disposal of such materials or waste. Further, the division provides assistance through a memorandum of understanding with the federal government to provide law enforcement services in the Florida Keys National Marine Sanctuary. The division also receives a federal grant (CFDA No. 15.616) to conduct certain activities under the Clean Vessel Act. The Clean Vessel Act Program is a nationwide competitive federal grant program that provides funds to states as part of an effort to clean up the nation's waterways. The program has received approximately \$10 million annually. Funding for the program comes from the Federal Sport Fish Restoration Account of the Aquatic Resources Trust Fund. The act encourages states to subcontract with private marinas/businesses, as well as local units of government to construct projects.<sup>94</sup> If the agency or this program was abolished, Florida would lose its share of the funds to participate unless reassigned to another agency.

The division currently does not have enough sworn officers to adequately patrol all of the state parks in Florida. As the need arises, local law enforcement agencies may be called upon to assist.

***Recommendation:*** Based on the findings above, it is recommended that the Environmental Law Enforcement Program be retained.

<sup>94</sup> <http://www.dnr.state.wi.us/org/caer/cfa/Grants/cleanvessel.html>

## F. Regulatory District Offices

*Funding:* District Offices Budget.<sup>95</sup>

	<i>FY 2005-06</i>	<i>FY 2006-07</i>	<i>FY 2007-08</i>
<i>Total Budget</i>	\$53,940,284	\$55,781,952	\$58,524,262
<i>FTE's</i>	819	819	813

Affected trust funds: Ecosystem Management and Restoration Trust Fund, Grants and Donations Trust Fund, Inland Protection Trust Fund, Land Acquisition Trust Fund, Permit Fee Trust Fund, Solid Waste Management Trust Fund, and the Water Quality Assurance Trust Fund.<sup>96</sup>

*Program Purpose:* To provide air resource management, water resource protection and restoration, and waste management services to the citizens of Florida, within close proximity to the citizens' locations statewide.

*Program Summary:* There are six regulatory district offices that provide for a closer and more personal interaction between the department and the citizens of the state. Essentially, the DEP's main office in Tallahassee works with policy and coordinates with the EPA and other federal government entities on programs delegated to and administered by the DEP on behalf of those entities. The district offices provide assistance at the local level, particularly technical assistance and outreach programs. The district offices issue most of the permits on behalf of the department and monitor compliance with those permit conditions.

District office locations are:

- Pensacola (Northwest)
- Jacksonville (Northeast)
- Orlando (Central)
- Tampa (Southwest)
- Ft. Myers (South)
- West Palm Beach (Southeast)

District responsibilities encompass the following major responsibilities of the department.

- Water Resource Protection and Restoration
- Air Assessment
- Air Pollution Prevention
- Waste Control
- Executive Direction and Support Services
- Waste Cleanup

*Findings:* According to the department as stated in its long range program plan, the district staff is available to assist the public and local governments on a more personal and immediate basis. The majority of permits are issued by the district offices in a timely manner. Further, the district staff conducts the majority of the compliance inspections on behalf of the department.

<sup>95</sup> Department of Environmental Protection

<sup>96</sup> DEP's Trust Fund Status and Activity Reports, Sept. 2007

District staff often work together with citizen groups to identify local priorities and address environmental concerns. As detailed in the department's Final Long-Range Plan for FY 2007-08 through FY 2011-12, each district has a slightly different focus based on the issues and concerns in that area of the state.

- **Northwest District** – Much of the district's work is focused on keeping up with the demand for permitting compliance and enforcement services that has increased as a result of the area's burgeoning growth. The district has taken on a significantly new challenge associated with the implementation of an ERP program<sup>97</sup> in the Panhandle. The ERP program has been in place elsewhere in Florida for more than a decade. Implementation in the Panhandle will require extensive community interaction and technical assistance to ensure that the regulated community and general public are aware of the benefits of the program in protecting unique environmental resources and understand how to comply with its requirements.
- **Central District** – This district has originated the Metropolitan Environmental Training Alliance (METRA), a cooperative organization consisting of the DEP's Central District, Orange County, Seminole County, the Greater Orlando Aviation Authority, the City of Orlando, and the Reedy Creek Improvement District. The role of the METRA is to address actions by city and county governments that sometimes result in serious hazardous waste violations. In addition, the METRA concept was designed to address the need for compliance assistance for small businesses, many of which have limited resources for such training.
- **Southeast District** – In this district, the Mobile Sources Section has formed a Southeast Air Coalition for Outreach (SEACO). The SEACO consists of partnerships of public and private organizations joined together to improve air quality within Palm Beach, Broward, and Miami-Dade Counties. The coalition promotes air quality programs and awareness, and assists outreach programs by exchanging ideas, pooling resources, producing joint documents and developing presentations. The SEACO participants also exchange lists of organizations that have an interest in engaging speaker for presentations, and maintain an activity calendar listing upcoming events.
- **Southwest District** – The district's staff joins with representatives from local governments, other interested organizations and citizens to develop plans for identifying watershed improvements and protection as part of the Southwest Florida Water Management District's Comprehensive Watershed Management (CWM) Initiative. This initiative promotes the management of water resources by evaluating interconnected systems of the watersheds located within its region. A team consisting of representatives from the district, local governments, other agencies and citizens oversees the development and implementation of CWM plans and projects.
- **South District** – This district focuses on issues facing this region and state, ranging from mangroves to wastewater. The district has an ongoing partnering relationship with Collier County to further the preservation of wetlands. Under the agreement, Collier County provides funding for an OPS position on an annual basis. The position provides direct public service to citizens who want to build or modify single-family homes by determining the boundary of any wetland areas on

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<sup>97</sup> Environmental Resources Permitting program regulates activities associated with the alteration of surface waters, including stormwater management and wetland impacts.

the property so the property owner can apply for the proper permits from the department. This OPS employee also provides assistance in completing the permitting process.

- **Northeast District** – Efforts in this district have focused recently on water quality in the St. Johns River. The district is an active participant in federal and local river cleanup initiatives, and as such, continually monitors water quality and reports the most recent water quality data on its internet web site. The district has signed a historic partnership agreement with the Navy and other members of the regulatory community. Executive leadership from the City of Jacksonville, the department, the Navy, and the St. Johns River Water Management District met at Naval Air Station Jacksonville to formally establish an environmental compliance partnering team. This partnership is focusing on innovative solutions that meet the needs of both the regulatory community and the military. The team’s mission is to ensure that “the regulatory community and the Navy maintain an active environmental excellence partnership that identifies and implements solutions to protect public health and improve the environment while respecting the Navy’s and regulatory agencies’ requirement to accomplish their missions.”

*Performance Measures:* The district offices do not have separate performance measures. The districts implement the regulatory air, water, and waste programs and the performance measures in these areas apply to the districts.

*Recommendation:* Based on the findings above, it is recommended that the district offices be retained.



## V. Advisory Councils And Committees

### A. Acquisition and Restoration Council

*Description:* Section 259.035, F.S., creates the Acquisition and Restoration Council to provide assistance to the Board of Trustees of the Internal Improvement Trust Fund (board) in reviewing the recommendations and plans for state-owned lands required under ss. 253.034 and 259.032, F.S. The council shall, in reviewing such recommendations and plans, consider the optimization of multiple-use and conservation strategies to accomplish the provisions funded pursuant to ss. 259.101(3)(a) and 259.105(3)(b), F.S.

The council competitively evaluates, selects, and ranks Florida Forever acquisition proposals, land uses and management plans on board lands.

As provided in s. 259.035(1), F.S., the council is composed of nine voting members, four of whom are appointed by the Governor.<sup>98</sup> The remaining five members are:

- The Secretary of Environmental Protection;
- The Director of the Division of Forestry of the Department of Agriculture and Consumer Services;
- The Executive Director of the Fish and Wildlife Conservation Commission;
- The Director of the Division of Historical Resources of the Department of State; and
- The Secretary of the Department of Community Affairs, or their respective designees.

The Department of Environmental Protection provides primary staff support to the council. The board has the authority to adopt rules governing this council and the process by which projects are reviewed and ranked.

*Findings:* OPPAGA<sup>99</sup> has reviewed this council and has found that the council has provided the department with stakeholder input and expertise.

The council has reviewed and has recommended approximately 2 million acres for approval on the Florida Forever list; 444,280 acres have been acquired.<sup>100</sup> The council also monitors the management of 3.375 million acres of state lands. The council holds meetings and public hearings about 12 times each year.

In its review, OPPAGA found that if this council did not exist, some other entity would need to perform these activities if the Florida Forever Program is continued. Accordingly, it is doubtful whether eliminating

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<sup>98</sup> These four members shall be from scientific disciplines related to land, water, or environmental sciences. These members serve 4-year staggered terms. No member can serve for more than 6 years.

<sup>99</sup> OPPAGA Memorandum to Senator Gaetz and Rep. Ambler, co-chairs of the Joint Legislative Sunset Committee, September 5, 2007.

<sup>100</sup> According to the department, this is the number of acres for through the end of FY 2006-07. This includes acreage acquired with Florida Forever Funds as well as P-2000 funds from May 2001 until the fund was depleted (July '04). Source: DEP e-mail 1/04/08.

the council would result in cost savings. Eliminating the council would require repealing s. 259.035, F.S., and amending other related statutes.

According to the department, the council's reported expenses for FY 2006-07 were \$10,595. These are the expenses incurred by the four citizen council members when actively working on council assignments. The estimate of department staff costs for that period is \$62,042.<sup>101</sup> The funding comes from the Conservation and Recreation Lands Trust Fund.

*Recommendation:* Based on the findings above, it is recommended that the Acquisition and Restoration Council be retained.

## **B. Florida Oceans and Coastal Council**

*Description:* Section 161.73, F.S., creates the Florida Oceans and Coastal Council within the Department of Environmental Protection. The council consists of 18 members, three of which are ex-officio. The ex-officio members are the Secretary of Environmental Protection, the Executive Director of the Fish and Wildlife Conservation Commission, and the Commissioner of Agriculture. The 15 voting members are:

- Five members appointed by the Secretary of Environmental Protection who are scientists chosen from the following fields: wetlands and watersheds; nearshore waters or estuaries; offshore waters or open oceans; hydrology and aquatic systems; and coastal geology or coastal erosion and shorelines.
- Five members appointed by Executive Director of the Fish and Wildlife Conservation Commission who are scientists chosen from the following fields: resource management; wildlife habitat management; fishery habitat management; coastal and pelagic birdlife; and marine biotechnology.
- Five members appointed by the Commissioner of Agriculture from a list submitted by the Florida Ocean Alliance. The list developed by the Florida Ocean Alliance must contain individuals from the following disciplines or groups: sportfishing; ports; cruise industry; energy industry; ecotourism; private marine research institutes; universities; aquaculture; maritime law; commercial fisheries; socioeconomics; marine science education; and environmental groups.

Members' terms of office varies. Members appointed by the Secretary of Environmental Protection and the Executive Director of the Fish and Wildlife Conservation Commission serve 4-year terms. Members appointed by the Commissioner of Agriculture serve 2-year terms.

The council's duties and responsibilities include developing a library to serve as a repository of information for use by those involved in ocean and coastal research. The council shall develop an index of this information to assist researchers in accessing the information.

The main responsibility of the council is to complete a Florida Oceans and Coastal Scientific Research Plan to be used by the Legislature in making funding decisions. The plan must recommend priorities for scientific research projects and must be submitted to the Legislature by February 1 of each year. The research projects must contain at least one of the objectives specified in s. 161.74(2), F.S.

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<sup>101</sup> DEP e-mail 1/04/08.

*Findings:* OPPAGA<sup>102</sup> has reviewed this council and has found that the council has provided the department with stakeholder input and expertise.

The council updates and publishes a research plan annually and recommends projects that meet certain criteria. It typically meets about six times per year.

OPPAGA has indicated that department managers assert that abolishing the council would reduce coordination of the state's ocean and coastal research activities.

The council's reported cost for FY 2006-07 was \$40,900 — \$20,000 for travel; \$9,000 for facilitation; and \$11,900 for supplies and printing. These expenses were funded by the Land Acquisition Trust Fund last year; however, in the current and future fiscal years it will have to come from the General Revenue Fund.

*Recommendation:* Based on the findings above, it is recommended that the Florida Oceans and Coastal Council be retained.

## C. Florida Water Resources Monitoring Council

*Description:* Section 373.026(3), F.S., provides that the department shall, to the greatest extent possible, cooperate with other state agencies, water management districts, and regional, county, or other local governmental organizations or agencies or agencies created for the purpose of utilizing and conserving the waters in this state. For this purpose, the department may maintain an advisory staff of experts.

The council consists of 10 voting members as follows:<sup>103</sup>

- One representative from each state agency with significant water quality monitoring responsibilities (Division of Aquaculture, Department of Agriculture and Consumer Services; Fish and Wildlife Conservation Commission; Division of Water Resource Management, DEP; and Bureau of Water Programs, Department of Health).
- One representative from each water management district.
- One representative from Florida Local Environmental Resource Agencies (FLERA)

The council chair is a DEP employee who is an ex-officio, nonvoting member. This person provides guidance and advice to the council.

*Findings:* OPPAGA<sup>104</sup> has reviewed this council and has found that the council has provided the department with stakeholder input and expertise.

The council has developed a strategic plan that will standardize the required metadata elements within a water quality database. The council generally meets quarterly.

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<sup>102</sup> Id.

<sup>103</sup> <http://www.dep.state.fl.us/coastal/WaterMonitoringCouncil/contacts.htm>

<sup>104</sup> Id.



As indicated in the December 2007 *FLERA Focus!* (a publication of the Florida Local Environmental Resources Agencies), the council was formed to assist in developing monitoring standards and provide an active forum for coordination and communication among monitoring entities across entire watersheds. Part of the council's vision includes "seeking to better protect, preserve, manage and restore water resources in the state of Florida by coordinating water resource monitoring and by sharing information." The idea for the statewide council was developed during retreats in 2004 and 2005 during which numerous FLERA members attended and provided valuable comments.<sup>105</sup>

OPPAGA has indicated that if the council did not exist, public input into water resource monitoring would be reduced and the sharing of information among state and local agencies could be hindered.

The council's reported cost for FY 2006-07 was \$26,900. These expenses were funded by the Land Acquisition Trust Fund last year; however, in the current and future fiscal years it will have to come from the General Revenue Fund.

*Recommendation:* Based on the findings above, it is recommended that the Florida Water Resources Monitoring Council be retained.

## D. Pollutant Trading Policy Advisory Committee

*Description:* Section 403.067(8), F.S., authorizes the DEP to adopt rules for procedures for pollutant trading among the pollutant sources to a water body or water body segment, including a mechanism for the issuance and tracking of pollutant credits. Prior to adopting such rules, the DEP was required to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives containing recommendations on such rules, including the proposed basis for equitable economically based agreements and the tracking and accounting of pollution credits or other similar mechanism. The recommendations were to be developed in cooperation with a technical advisory committee that includes experts in pollutant trading and representatives of potentially affected parties.

*Findings:* A Pollutant Trading Policy Advisory Committee was formed by the DEP and the committee issued its report in December 2006. The committee having fulfilled its purpose is no longer active.

The committee's reported cost for FY 2006-07 was \$26,000 — approximately \$7,000 in travel costs for DEP staff and council members and approximately \$19,000 in staff time. These expenses were charged to the Water Protection and Sustainability Trust Fund.

*Recommendation:* The Pollutant Trading Policy Advisory Committee is no longer active and has been abolished.

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<sup>105</sup> *FLERA Focus!*, December 2007.

## **E. Florida Greenways and Trails Council**

*Description:* Section 260.0142, F.S., creates the Florida Greenways and Trails Council in DEP to advise the department in the execution of the Florida Greenways and Trails Act (ch 260, F.S.) The council is composed of 21 members.

- Five members appointed by the Governor, with two members representing the trail user community, two members representing the greenway user community, and one member representing private landowners.
- Three members appointed by the President of the Senate, with one member representing the trail user community and two members representing the greenway user community.
- Three members appointed by the Speaker of the House of Representatives with two members representing the trail user community and one member representing the greenway user community.
- Remaining 10 members:
  - Secretary of Environmental Protection, or a designee.
  - Executive Director of the Fish and Wildlife Conservation Commission, or a designee.
  - Secretary of Community Affairs, or a designee.
  - Secretary of Transportation, or a designee.
  - Director of the Division of Forestry in the Department of Agriculture and Consumer Services, or a designee.
  - Director of the Division of Historical Resources of the Department of State, or a designee.
  - A representative of the water management districts. Membership on the council rotates among the five water management districts.
  - A representative of a federal land management agency.
  - A representative of the regional planning councils appointed by the Secretary of Environmental Protection in consultation with the Secretary of Community Affairs.
  - A representative of local governments appointed by the Secretary of Environmental Protection in consultation with the Department of Community Affairs. Membership shall alternate between a county representative and a municipal representative.

Members serve 2-year terms. Members appointed by the President of the Senate and the Speaker of the House of Representatives may be reappointed for no more than four consecutive terms. The representative of the water management district, regional planning councils, and local governments may be reappointed for not more than two consecutive terms.

The council's duties are to:

- Facilitate a statewide system of interconnected landscape linkages, conservation corridors, greenbelts, recreational corridors and trails, scenic corridors, utilitarian corridors, reserves, regional parks and preserves, ecological sites, and cultural/historic/recreational sites using land-based trails that connect urban, suburban, and rural areas of the state and facilitate expansion of the statewide system of freshwater and saltwater paddling trails.
- Recommend priorities for critical links in the Florida Greenways and Trails System.
- Review recommendations for acquisition funding under the Florida Greenways and Trails Program and recommend to the Secretary of Environmental Protection which projects should be acquired.
- Review designation proposals for inclusion in the Florida Greenways and Trails System.
- Encourage public-private partnerships to develop and manage greenways and trails.
- Review progress toward meeting established benchmarks and recommend appropriate action.

- Make recommendations for updating and revising the implementation plan for the Florida Greenways and Trails System.
- Promote greenways and trails support organizations.
- Support the Florida Greenways and Trails System through intergovernmental coordination, budget recommendations, advocacy, education, and any other appropriate way.

*Findings:* The council reviews and approves all greenway and trails acquisitions, designations, and prioritization maps. The council meets four times a year.

OPPAGA has indicated that if the council did not exist, public input in the development of greenways and trails would be reduced.

As indicated by the department, the council's costs for FY 2006-07 were:

Travel	\$ 1,047
Salaries	\$ 5,978
OPS	\$ 9,413
Expense	\$ 967
<b>Total:</b>	<b>\$ 27,405 from Land Acquisition Trust Fund</b>

*Recommendation:* Based on the findings above, it is recommended that the Greenways and Trails Council be retained.

## F. Environmental Regulation Commission

*Description:* Section 20.255(7), F.S., creates the Environmental Regulation Commission as a part of the Department of Environmental Protection. The commission is composed of seven residents of the state appointed by the Governor, subject to confirmation by the Senate. In making appointments, the Governor shall provide reasonable representation from all sections of the state. Membership shall be representative of agriculture, the development industry, local governments, the environmental community, lay citizens, and members of the scientific and technical community who have substantial expertise in the areas of the fate and transport of water pollutants, toxicology, epidemiology, geology, biology, environmental sciences, or engineering. The Governor appoints the chair, and the vice chair is elected from among the membership.

Administrative and other support services necessary for the commission are furnished by the department.

*Findings:* Section 403.804, F.S., provides the powers and duties for the commission. Except for some explicit exceptions, the commission is the standard-setting authority for the department. In exercising its authority, the commission shall consider scientific and technical validity, economic impacts, and relative risks and benefits to the public and the environment. The commission may not establish department policies, priorities, plans, or directives. The commission schedules monthly meetings, but may meet less often.

Most issues that go before the ERC relate to air pollution, water quality, and waste management. The commission does not employ staff of its own; instead the department staffs the commission to provide the technical and scientific expertise on those issues. Questions have arisen regarding the independent nature

of the commission. While ideally the commission should have independent consultants and expertise, it is not economically feasible to maintain such a structure.

OPPAGA has indicated that if abolished, the Legislature would have to designate another entity to set standards relating to air pollution, water quality, and waste management.

As indicated in OPPAGA's Sunset Memo on DEP's advisory committees, the commission's reported cost for FY 2006-07 was \$13,790. These expenses are funded from the Administrative Trust Fund.

*Recommendation:* Based on the findings above, it is recommended that the Environmental Regulation Commission be retained with certain modifications. At the very least, the Legislature should consider providing for an attorney to be assigned exclusively to the commission who is not an employee of the department. Further, the Legislature may want to consider giving the commission the authority to hire outside consultants on a case-by-case basis to assure that the standards and rules adopted by the commission for use by the department are not unduly biased. The department's wealth of technical and scientific talent must also continue to be utilized as much as possible.

## **G. Committee on Landscape Irrigation and Florida-Friendly Design Standards**

*Description:* Section 373.228, F.S., directed the water management districts to work with interested parties to develop landscape irrigation and Florida-Friendly design standards for new construction. Local governments are to use the standards and guidelines when developing landscape irrigation and Florida-Friendly ordinances. As a result, the Committee on Landscape Irrigation and Florida-Friendly Design Standards was formed with the following members:

- Northwest Florida Water Management District
- Southwest Florida Water Management District
- St. Johns River Water Management District
- South Florida Water Management District
- Suwannee River Water Management District
- Department of Environmental Protection
- Department of Agriculture and Consumer Services
- Department of Transportation
- Florida Association of Counties
- Florida League of Cities
- Institute of Food and Agricultural Sciences at the University of Florida
- Florida Nursery, Growers and Landscape Association
- Florida Chapter of the American Society of Landscape Architects
- Florida Irrigation Society
- Association of Florida Community Developers

*Findings:* The Legislature created s. 373.228, F.S., in 2004, to address landscape irrigation design. Since that time, the committee has convened and has developed the standards and guidelines to be used when developing landscape irrigation and Florida-Friendly ordinances. These standards and guidelines were

published in a booklet in December 2006 entitled *Landscape Irrigation & Florida-Friendly Design Standards*. Subsection (4) of s. 373.228, F.S., provides that every 5 years the committee must review the standards and guidelines to determine whether new research findings require a change or modification of the standards or guidelines. The committee is administratively attached to the Office of Water Policy in DEP.<sup>106</sup>

OPPAGA has indicated that no entity would periodically review the design standards unless the Legislature designates such an entity.

The committee's reported cost for FY 2006-07 was \$10,000. The costs were covered by a \$10,000 federal grant.

Since the committee issued the standards and guidelines for landscape design and Florida-friendly design in 2006, s. 373.228, F.S., does not require the committee to meet again until 2011 (mandated 5-year review of the standards.) At that time, the committee will be reconstituted to review the standards. Although the committee is not active until then, the authority for the review by the committee is found in s. 373.228, F.S.

*Recommendation:* Based on the findings above, it is recommended that the Legislature not repeal the statutory authority for the Committee on Landscape Irrigation and Florida-Friendly Design Standards found in s. 373.228, F.S. Instead, the Legislature may Sunset the requirement that a review be conducted every 5 years after the first mandated 5-year review in 2011.

## H. Non-mandatory Land Reclamation Committee

*Description:* Section 378.033, F.S., creates the Nonmandatory Land Reclamation Committee in DEP to serve as an advisory body on matters relating to nonmandatory land reclamation resulting from phosphate mining. The committee is composed of five members appointed by the Governor and confirmed by the Cabinet. In making the appointments, the Governor shall consider the needs of the program for engineering, fiscal, reclamation, and environmental expertises. Three of the committee members shall be selected respectively from Hamilton County, Polk County, and Hillsborough County. Members serve 4-year staggered terms and may be reappointed.

*Findings:* The nonmandatory land reclamation program was designed to provide funding for the reclamation of eligible phosphate lands mined before July 1975. Landowners submit reclamation plans to the department for approval, proceed with reclamation construction, and are reimbursed for approved costs. As provided in s. 378.035, F.S., the deadline for applications for this program was January 1, 2005.

The committee advises the department on nonmandatory land reclamation and recommends approval, modification or denial of reclamation grant applications, and establishes the priority for the annual funding of individual reclamation programs. At least once a year, public input for the prioritization of funding of reclamation grant applications is received when the committee meets.

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<sup>106</sup> [http://www.dep.state.fl.us/water/waterpolicy/land\\_irr.htm](http://www.dep.state.fl.us/water/waterpolicy/land_irr.htm)

At its October 30, 2007 meeting, the committee was recommending a priority funding order for the approximately 8,000 acres of mined land yet to be reclaimed. The estimated funding for this reclamation effort is \$41 million. As indicated by the department, the funding for Fiscal Year 2007-08 is \$4 million — \$1 million from the Nonmandatory Land Reclamation Trust Fund and \$3 million in general revenue funding.

OPPAGA has indicated that if the committee did not exist, there could be a loss of technical expertise and citizen input into land reclamation decisions.

The committee's reported cost for FY 2006-07 was \$1,216. This cost was for staff time and travel to one meeting in Lakeland. The salary and travel expenses were paid from the Minerals Trust Fund.

*Recommendation:* Based on the findings above, it is recommended that the Nonmandatory Land Reclamation Committee be retained.

## **I. Small Business Air Pollution Compliance Advisory Council**

*Description:* Section 403.8051, F.S., creates the Small Business Air Pollution Compliance Advisory Council within the DEP. The council consists of seven members appointed as follows:

- Two members who are not owners or representatives of owners of small business stationary sources, appointed by the Governor to represent the public.
- Two members, one each appointed by the President of the Senate and the Minority Leader of the Senate, who are owners or who represent owners of small business stationary sources.
- Two members, one each appointed by the Speaker of the House of Representatives and the Minority Leader of the House of Representatives, who are owners or who represent owners of small business stationary sources.
- One member appoint by the Secretary of Environmental Protection to represent the department.

The council's function is to:

- Render advice on the effectiveness of the department's small business stationary air pollution source technical and environmental compliance assistance program, the difficulties encountered, and the degree and severity of enforcement;
- Review information for small business stationary air pollution sources to assure such information is understandable by the layperson; and
- Make periodic reports to the administrator of the U.S. EPA as required by federal law.

*Findings:* Section 507(3) of the federal Clean Air Act requires that the state create a Compliance Advisory Panel of not less than seven individuals for the purpose of rendering advice on the effectiveness of the department's small business stationary air pollution source technical and environmental compliance assistance program, the difficulties encountered, and the degree and severity of enforcement. The advisory panel must also review information for small business stationary air pollution sources to assure such

information in understandable by the layperson. Finally, the advisory panel must make periodic reports to the administrator of the EPA.<sup>107</sup> This council fulfills that federal requirement.

The council provides a direct link to the small business community, which allows for a realistic perspective issues and needs and provides a gauge of program effectiveness. The council meets annually.

The council's reported cost for FY 2006-07 was \$1,200.<sup>108</sup> According to the DEP staff, \$705.69 was incurred for travel and the council uses the services of a full-time DEP employee for approximately 2 hours a month. These expenses are paid for out of the Title V emission fees which are deposited into the Air Pollution Control Trust Fund.

*Recommendation:* Based on the findings above, it is recommended that the Small Business Air Pollution Compliance Advisory Council be retained as it is required by the federal Clean Air Act.

## **J. Technical Advisory Council for Water and Domestic Wastewater Operator Certification**

*Description:* Section 403.87, F.S., required that the Secretary of Environmental Protection appoint a technical advisory council to advise the department on the statutory requirements relating to the certification of operators for water treatment plants, water distribution systems, and domestic wastewater treatment plants.

*Findings:* In 1997, the Legislature enacted ch. 97-236, L.O.F., to address the requirements set forth in the 1996 amendments to the federal Safe Drinking Water Act to allow Florida to qualify for the federal grants to capitalize and Drinking Water Revolving Loan Fund. In that legislation, the licensing of water treatment plant operators and wastewater treatment plant operators was transferred from the Department of Business and Professional Regulation to the DEP. This council fulfills a requirement that the EPA has for such a council.

Without the council, the state risks losing federal funds.

The council's reported cost for FY 2006-07 was \$1,200. These expenses are paid out of the Water Quality Assurance Trust Fund.

*Recommendation:* Based on the findings above, it is recommended that the Technical Advisory Council for Water and Domestic Wastewater Operator Certification Council be retained as it is a requirement of the EPA.

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<sup>107</sup> Department of Environmental Protection Government Accountability Act Agency Report, December 2006, page 8.

<sup>108</sup> OPPAGA Memorandum to Senator Gaetz and Rep. Ambler, co-chairs of the Joint Legislative Sunset Committee, September 5, 2007.

## K. Recreational Trails Program Advisory Committee

*Description:* The Recreational Trails Program Advisory Committee is a requirement of 23 U.S.C. 206, the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), in order for states to receive federal aid assistance from the federal Highway Administration for recreational trails. Pursuant to subsection (c) of s. 206, Title 23, “the State shall establish a State recreational trail advisory committee that represents both motorized and nonmotorized recreational trail users, which shall meet not less often than once per fiscal year.”

The committee membership must include trail users. There must be representation of off-road motorized recreational trail users, and representation of nonmotorized recreational trail users. The committee membership should represent trail uses which take place within the state. Membership may include representation from any kind of recreational trail uses or multiple representation from particular trail uses. There may be representation of local, state, or federal agencies, land use or natural resource organizations, trail advocacy organizations, recreational businesses, etc.

*Findings:* Although the federal legislation does not require a state to use its advisory committee to approve projects for funding, the legislation does require the state to receive guidance from the committee on how it solicits and selects trail projects for funding. This guidance includes procedures for on-the-ground trail projects and for trail education projects.<sup>109</sup> The advisory council advises the department’s Office of Greenways and Trails on the Federal Highway Administration’s Recreational Trails Program through development of scoring criteria, scoring of applications, and assisting with development of statewide trails education master plan.<sup>110</sup>

As indicated by the department, the council’s costs for FY 2006-07 are:

Travel	\$	979
Salary	\$	130
<b>Total: \$ 1,110 from Grants and Donations Trust Fund</b>		

*Recommendation:* Based on the findings above, it is recommended that the Recreational Trails Program Advisory Committee be retained as it is required by federal law.

## L. State Geologic Mapping Advisory Committee

*Description:* The National Cooperative Geologic Mapping Program (NCGMP) is a Congressionally mandated program within the U.S. Geologic Survey pursuant to the National Geologic Mapping Act of 1992. The State Geologic Survey Mapping Component (STATEMAP) of the NCGMP was created to establish the geologic framework of areas that are vital to the welfare of individual states.

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<sup>109</sup> *Recreational Trails Program*, as administered by the Office of Greenways and Trails, Department of Environmental Protection, Funded thru Federal Highway Administration, U.S. Department of Transportation, pg. 6.

<sup>110</sup> Memo from Office of Program Policy Analysis and Government Accountability to Senator Don Gaetz and Representative Kevin Ambler, co-chairs of the Joint Legislative Sunset Committee, pg. 7.



*Findings:* Each State Geologist determines the state's mapping priorities in consultation with a State Mapping Advisory Committee. These priorities are based on state requirements for geologic map information in areas of multiple-issue need or compelling single-issue need and in areas where mapping is required to solve critical earth science problems.<sup>111</sup>

The committee's reported cost for FY 2006-07 was \$350.

*Recommendation:* Based on the findings above, it is recommended that the State Geologic Mapping Advisory Committee be retained as it is required by federal law in order to be eligible for STATEMAP funding.

## **M. Caloosahatchee-St. Lucie Rivers Corridors Advisory Committee**

*Description:* The Caloosahatchee-St. Lucie Rivers Corridors Advisory Committee was comprised of local businesses, environmental groups, city officials, county officials, and scientists that were affected by Lake Okeechobee and Caloosahatchee-St Lucie River discharges. The members were appointed by the Secretary.

The committee issued a report in February, 2007. At that time, the committee was dissolved.

*Recommendation:* None. The Caloosahatchee-St. Lucie Rivers Corridors Advisory Committee no longer exists.

## **N. Big Cypress Swamp Advisory Committee**

*Description:* Section 377.42, F.S., creates the Big Cypress Swamp Advisory Committee in the DEP. The Big Cypress Swamp Advisory Committee is appointed by and serves at the pleasure of the Secretary of Environmental Protection. Membership of the committee is as follows:

- The State Geologist who serves as chair.
- A representative from the oil industry.
- A representative from an organized conservation group.
- A botanist.
- A hydrologist.

Each application for a permit to explore for hydrocarbons in the Big Cypress Swamp shall be reviewed by the committee. The committee has no final authority on approval or denial of permits but makes recommendations to the department. The committee meets at the call of the chair to evaluate a pending application for a permit to drill in the Big Cypress watershed and may make other evaluations requested by the department.

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<sup>111</sup> <http://ncgmp.usgs.gov/ncgmpabout/statemap/>

*Findings:* The committee helps ensure that environmental concerns are considered with recommendations to the Florida Geological Survey for permit conditions as required by law. The committee only meets when a new oil exploration well is proposed. The last meeting was in 1989.

Although drilling applications are rare, the committee is available to review them when they materialize. Predicting the frequency of applications is difficult. An application was filed but subsequently withdrawn in 2006.

There were no reported costs in FY 2006-07. When expenses are incurred, they come from the Minerals Trust Fund.

*Recommendation:* Based on the findings above, even though the Big Cypress Swamp Advisory Committee has not met since 1989, it is recommended that the statutory authority for the committee be retained in order to address environmental concerns when and if an application for oil exploration in the Big Cypress watershed is made.

## **O. Land Use Advisory Committee**

*Description:* Section 378.011, F.S., creates the Land Use Advisory Committee. Membership of the committee is as follows:

- One member from the Bureau of Geology of the DEP who serve as the chair.
- One member from the Executive Office of the Governor, to be appointed by the Governor.
- One member from the Tampa Bay Regional Planning Council, one member from the Central Florida Regional Planning Council, and one member from the North Central Florida Regional Planning Council, to be appointed by the respective directors of said regional planning councils.
- One member to represent the Board of County Commissioners of Polk County, one member to represent the Board of County Commissioners of Hillsborough County, and one member to represent the Board of County Commissioners of Hamilton County, to be appointed by the chairs of said boards.
- One member from the Fish and Wildlife Conservation Commission to be appointed by the Executive Director.
- Two members of the public to be appointed by the Governor.

*Findings:* The committee completed its report by July 1, 1979 and has been inactive since that time.

*Recommendation:* Since the Land Use Advisory Committee's purpose has been fulfilled and the committee has been inactive since 1979, it is recommended that the Legislature repeal s. 378.011, F.S., which creates this committee.



## VI. General Department Issues

*Issue:* The fees for permits issued by the department do not appear to cover the costs to issue such permits. The balance of the costs are subsidized by general revenue funds.

*Findings:*

### **Overall Permit Fee Costs**

The DEP has over 100 different fees for various types of environmental permits. Prior to 1991, the department was allowed, but not mandated, to establish permit fees based on the costs to issue and administer those permits. The former Department of Environmental Regulation realized that the permits were inadequate and commissioned KPMG Peat Marwick to do a permit fee study in 1991. That study resulted in a bill filed and passed in 1991 that significantly increased the statutory caps on many of the department's fees. That legislation also required the department to establish the fees for permits sufficient to cover the issuance and administrative costs for those permits.<sup>112</sup>

In 1997, the Auditor General in Report No. 13104, stated that the department had not established a defined methodology for consistently determining the extent of costs associated with each type of permit. As a result, the department could not demonstrate that established permit fees were adequate to ensure that costs associated with such permits were recovered as required by law. The report recommended that the department establish a methodology for the consistent determination of costs associated with each type of permit.

The department responded to Auditor General Report No. 13104 by establishing a Technical Research Committee to review the costs and benefits of implementing a tracking system at the permit level. The Technical Research Committee in 2000 concluded that tracking costs at the permit level would be impractical and that tracking such costs at the program level would be more feasible.

In March 2002, the Auditor General released another report relating to the department's permits. Auditor General Report No. 02-169 again stated that the department must establish guidelines that clearly define those permit-related costs that should be recovered through the assessment of permit application fees and that the department should allocate them to the individual types of permits issued by the department, rather than at the program level.

In December 2002, the Senate Committee on Regulated Industries issued an interim report that examined Florida's regulatory fee structure. With regard to cost recovery and permit fees, the appropriateness of fee caps should be reviewed to make sure the upper limits are sufficient to cover all included costs.<sup>113</sup> That report looked at various fee issues that are common to many state agencies and did not simply focus on one agency such as the DEP. As noted in the report's findings, concerns had been raised when the fees collected do not completely cover the cost of the benefits provided. Concerns were also raised concerning some disparate treatment among those regulated.

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<sup>112</sup> Chapter 91-305, Laws of Florida

<sup>113</sup> Committee on Regulated Industries Interim Project Report 2003-139, *Examining the Fairness of Florida's Regulatory Fee Structure*

In 2003, CS/SB 372 passed the Senate but was not considered by the House of Representatives. This bill would have established a periodic fee review process in conjunction with constitutionally required 4-year trust fund reviews. The bill also would have required the DEP to determine the costs associated with each permit identified in Rule 62-4, Florida Administrative Code.

In the interim preceding the 2004 Legislative session, a joint effort was underway to study fees. Participating in this effort was the Auditor General, OPPAGA, the Governor's Office of Policy and Budget, the Senate Committee on Appropriations, and the House Committee on Appropriations. This study was to answer the following questions:

- Are the fees, and related fines and penalties, intended to cover costs, influence behavior, or provide some combination of both?
- Is the fee amount current, based on a periodic evaluation of economic conditions, population served, scope of services, and period covered?
- Are available offsets (resources other than fee revenues) considered in the setting of fee amounts? Particularly, are General Revenue offsets consistent with legislative intent regarding fees covering costs and influencing behavior?
- Can the costs of the subject governmental function or public service be linked in a direct, basic way with the delivery of services in measurable quantities?
- Do the processes for fee setting, fee collections, distributions, and program expenditures incorporate financial and operating efficiencies that provide for the complete collection of available fee revenues at minimum administrative costs?<sup>114</sup>

A survey was sent to all state agencies by the Governor's Office of Policy and Budget to solicit specific information regarding fees that will likely affect budget and appropriations policy for future years. In its response, the DEP maintained that it is unable to determine costs at the individual permit level primarily because the Florida Accounting Information Resources System (FLAIR) tracks appropriations and expenditures at the program level for the budgetary process and does not provide for tracking individual permit costs.

For the National Pollutant Discharge Elimination System (NPDES), s. 403.0885(1), F.S., requires that "permit fees charged by the department for processing of federally approved NPDES permits be adequate to cover the entire cost to the department for program management, for reviewing and acting upon any permit application, and to cover the cost of surveillance and other field services of any permits issued pursuant this section." The department is able to determine the costs associated with this permit.

The department also administers and issues permits for the Title V program under the federal Clean Air Act. These are permits issued to major sources of air pollution, such as power plants and manufacturing facilities. Under this program, which is delegated to the state from the EPA, the state must charge a fee based on an applicable annual operation license fee factor times the tons of each regulated air pollutant. Currently, s. 403.0872(11), F.S., provides that the license fee factor is \$25 or another amount determined by department rule which ensures that the revenue provided by each year's operation license fees is sufficient to cover all reasonable direct and indirect costs of the major stationary source air-operation permit program. The license fee factor may be increased beyond the \$25 only if the secretary of the

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<sup>114</sup> *Analysis Framework for Florida Fees Potential General Revenue Savings*, Joint Auditor General and OPPAGA Study, Discussion Draft 8/27/03, page 2.

department affirmatively finds that a shortage of revenue for support of the major stationary source air-operation permit program will occur in the absence of a fee factor adjustment. The annual license fee factor may never exceed \$35. Currently, the department is proposing to increase that fee factor for the air operation permits to \$30.

Section 403.087(6), F.S., provides that “the department shall require a processing fee in an amount sufficient, to the greatest extent possible, to cover the costs of reviewing and acting upon any application for a permit or request for site-specific alternative criteria or for an exemption from water quality criteria and to cover the costs of surveillance and other field services and related support activities associated with any permit or plan approval issued pursuant to this chapter.” To date, the department has still not been able to determine the costs to implement a specific permit.

**Permit Fees — ERP and Drinking Water**

In October 2007, the Legislature passed SB 2-C which provided for appropriations and reductions in appropriations for FY 2007-08. Contained in that bill was proviso language which stated:

“The Department of Environmental Protection is directed to provide a report on the regulatory programs under chapter 373 and part 6 of chapter 403, Florida Statutes. The report shall, at a minimum evaluate the comparative analysis of the revenues and expenditures to determine the sufficiency of each regulatory program for which a fee schedule exists. The report and its recommendations shall be provided to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 1, 2008.”

The regulatory permitting programs under ch. 373, F.S., for the department generally include the ERP program. The regulatory permitting programs under part VI of ch. 403, F.S., pertain to Florida’s drinking water program.

The DEP issued its required report in January 2008. As indicated in the report, the ERP program responsibilities are split between the DEP and the water management districts. The information presented in the report is for the DEP only, and does not include the revenues and expenditures of the water management districts as they relate to the issuance of ERP permits.

The department’s report, based on the proviso language, focuses on the relationship between fee revenues and general revenue funding and evaluates the ability of the DEP to generate additional fee revenues to replace some or all of the general revenue funding.

As provided in the DEP’s report, the following tables summarize the statewide budget for both the ERP program and the Drinking Water Program for 2007-08.

*Environmental Resources Permitting Program*

<b>General Revenue</b>	<b>% of Total</b>	<b>Permit Fee TF</b>	<b>% of Total</b>	<b>Grants &amp; Donations TF</b>	<b>% of Total</b>	<b>Other TF</b>	<b>% of Total</b>	<b>Total</b>
\$7,119,200	41%	\$605,078	3.5%	\$347,162	2%	\$9,309,610	53.6%	\$17,381,051

As evidenced above, general revenue funds subsidize 41 percent of the ERP fees.

*Drinking Water Program*<sup>115</sup>

General Revenue	% of Total	Permit Fee TF	% of Total	Grants & Donations TF	% of Total	Other TF	% of Total	Total
\$1,361,092	21%	\$1,115,536	17.2%	\$2,050,189	31.6%	\$1,965,536	30.3%	\$6,492,353

As evidenced above, general revenue funds subsidize 21 percent of the Drinking Water Program fees.

As provided in s. 403.087, F.S., permit fee caps are provided for the various permits fees issued by the department. A drinking water construction or operation permit may not exceed \$7,500; while a drinking water distribution system permit may not exceed \$500. The department reports that drinking water distribution systems permits typically represents more than 90 percent of the 5,000 or more dinking water permit applications submitted to the DEP each year. To the extent that general permit may be used to streamline the permitting process for applicants ducting precisely similar activities, a \$100 statutory cap exists unless the general permit requires a professional engineer's certification, in which case the cap is \$500.

According the DEP report, the majority of Florida's 5,900 regulated public water systems are small communities, small private utilities and other small operations. State policy has been to minimize fees particularly for this universe and, in some cases to waive or exempt fees.

Under an operating agreement between the DEP and the Department of Health, there are nine approved county health units to administer the drinking water program. Under that agreement, the county health units keep 80 percent of the state permit fees they collect and return 20 percent to the DEP to underwrite DEP's costs to oversee and audit the local programs and to administer the other tasks that fall directly on DEP. The following table indicates the Department of Health's Drinking Water Funding.

Department of Health Drinking Water Funding*	
Revenue Source	Amount
State General Revenue	
• To county health units	\$2.02 million
• To Department of Health lab	\$1.31 million
Local (county) general revenue	\$1.24 million
Local (county) fees	\$1.02 million
Lab fees	\$0.93 million
State permit fees (DEP rule authority)	\$1.00 million
Direct subsidy from DEP	\$0.80 million
<b>TOTAL</b>	<b>\$8.43 million</b>

\*Excludes small drinking water systems not regulated under ch. 403, F.S.

The following are DEP's stated options for adjusting the programs' reliance on general revenue funding:

<sup>115</sup> There are a variety of non-regulatory functions conducted by the Drinking Water Program associated with federal grant commitments and funded by federal grants which are excluded from this calculation and cannot be used for regulatory activities.

ERP

- Increase permit fees to approximately 4.5 times higher, on average, than they are now to replace *all* general revenue funding with permit fee revenues over time.
- Increase permit fees to cover *25 percent* of the total program costs to approximate the fee share from 10-15 years ago. Fees would have to be increased about 2.2 times on average.

DEP states that an across-the-board increase in permit fees is not practical. A more practical approach would be to target a relative few of the more than 200 permit types.

Drinking Water Program

- To replace all of the general revenue funding, permit fees would have to be more than doubled. Most drinking water fees are not currently set by rule at the statutory caps. The fee schedule takes into account reductions for “disadvantaged” local governments. These entities may not be able to sustain a fee increase.
- Currently, drinking water systems do not pay operating fees, only fees for construction activities. Consideration could be given to establishing annual operating fees.

DEP rulemaking to increase fees would take time through the ch. 120, F.S., process. Also, statutory changes may be needed to allow the DEP to initiate such rulemaking.

*Recommendations:* As indicated in the findings in this report, several OPPAGA and Auditor General Reports have severely criticized the department for not being able to determine the costs associated with the various permits issued by the department. With regard to permit fees in general, the department should be required to determine the costs associated with each permit identified in Rule 62-4, F.A.C., and submit a report to the Legislature by a date certain. Failure to comply could result in certain punitive actions by the Legislature such as placing the department’s budget in reserve until the DEP complies with that directive. Once the costs are established, the Legislature should consider statutorily establishing baselines for permit fees in order to ensure that some higher level of cost recovery is achieved. The Legislature may further, by statute, direct the department to adjust the permit fees every 2 years and tie that adjustment to an economic index such as the Consumer Price Index.

Specifically, with regard to the ERP permit fees and the drinking water program fees, the Legislature may want to require that those fees be increased to replace a specified percentage of the general revenue funds that is currently subsidizing those permit costs.

Drinking water systems currently do not pay operating fees, only fees for construction activities. Consideration should be given to establishing annual operating fees.





## VII. Conclusions and Recommendations

The mission of the DEP is to administer and enforce state and federal laws governing pollution control, the protection of public health and Florida's unique natural resources. The agency is charged with providing good air to breathe, clean and safe water to drink, and maintaining an otherwise healthy environment for the public to live. Also, a healthy environment is essential for providing suitable habitat for the various threatened and endangered species in Florida.

The agency also manages the special recreational opportunities for all of Florida's residents and the many visitors to Florida.

While it may appear that there may be a duplication of effort in some cases with other state agencies performing similar functions, that effort is minimized by the DEP working with the other agencies through formal and informal agreements and memoranda of understanding. The focus here is to take advantage of each agency's expertise and draw on that expertise, not duplicate it.

Many of the agency's programs cannot be provided more efficiently by another agency. Often, many of the programs have close federal links and several have been delegated to the state to administer on behalf of the federal government. One such measure is the acreage of land added to the Florida Forever list for state purchase that is stated as a percentage increase each year of the total acreage available.

It is therefore recommended that the DEP be retained along with its various programs and advisory councils and committees, with certain modifications. Based on the findings contained in this report, the following recommendations are offered:

**Recommendation #1** — The department is currently requesting a reorganization of some of its programs. Since the department's planned reorganization coincides with the Sunset Review, it should be considered as part of the Sunset Review process. Therefore, it is recommended that the department provide specific information on the efficiencies and effectiveness that would result from the proposed reorganization to the Legislature for consideration during the 2008 Legislative session.

**Recommendation #2** — Based on the findings in the report regarding the need to have a consolidated governance structure for energy policy, the Legislature may consider the following options, however, staff recommends *Option 1*.

**Option 1** — Create a new independent entity for the development of a state energy and climate policy. The Florida Energy Commission also has made such a recommendation and staff recommends that the Legislature seriously consider this option with certain modifications. Any such entity created should actually consolidate all of the energy policy functions for the state and must include all of the coordination and liaison activities with the federal government and the Federal Energy Regulatory Commission as they relate to utility siting issues. This entity should be administratively attached to the DEP for staff support and to take utilize existing resources, i.e., the Office of Strategic Projects and Planning.

Option 2 — Continue to have the Florida Energy Office in DEP and the Florida Energy Commission address energy policy for Florida.

Option 3 — Move the Energy Office and the establishment of energy policy to the Governor's office.

**Recommendation #3** — The drycleaning solvent cleanup program is severely underfunded and it is estimated that it will take another 47 years to address the remediation of sites contaminated with drycleaning solvents. Therefore, the Legislature should consider increasing the gross receipts tax on drycleaning, the registration fees for drycleaning facilities, and the tax on perchloroethylene to provide more funds to clean up these sites to protect the groundwater resources. Also, the deductibles that eligible drycleaning facility owners must pay when their sites are cleaned up should be increased. Currently, the deductibles range from \$1,000 to \$10,000.

**Recommendation #4** — Because there are not sufficient funds for the continued cleanup of Mulberry and Piney Point and outstanding land reclamation projects, the Legislature should consider additional sources of revenue to complete these critical projects.

**Recommendation #5** — The responsibility for issuing ERP permits for single family docks may be delegated to the water management districts provided that the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund, approves this change because of the sovereign submerged land use issue. The main benefit would be to the individual person seeking a dock permit in a timely manner if the water management district could process such permit applications more efficiently. Also, the permit applicant could have more access to the permitting entity and therefore may be able to resolve any permitting issues in a more efficient manner. This should result in improved efficiency because of further consolidation of the ERP program.

**Recommendation #6** — Funding remains an issue for state parks. Park fees could be increased; however, significantly increased daily entrance fees would impact the lower income visitors to the parks systems. Camping fees could be increased, particularly for those campers in motor homes or campers who use electrical hookups and waste disposal facilities. The increased fees would offset the rising energy costs that have negatively impacted the parks operations. Another option to increase efficiency and reduce costs is to close those parks where attendance is very low and the costs to maintain are very high. Due to staff shortages in the state parks, the DEP should continue to pursue outsourcing activities such as mowing and restroom maintenance.

**Recommendation #7** — The Florida Senate Environmental Preservation Committee recently completed Interim Project Report 2008-213, *Land Acquisition in Florida*, which specifically addresses the activities associated with the Florida Forever Program and evaluates the state's progress and make recommendations on the potential future of land acquisition efforts. The committee's report provided three options for the Legislature to consider. However, based on the findings in this report, it is recommended that the Legislature consider *Option 2* as it relates to Florida's land buying activities.

Option 1 — Allow the Florida Forever land acquisition program to end and shift the acquisition of conservation lands to federal, local, or private efforts.

Option 2 — Modify the existing Florida Forever Program to include:

- Reworking the entire acquisition list.
- Developing specific targets for each conservation measure so that the acquisition efforts can be tracked and goals reached.
- Creating additional oversight in the acquisition of mega-parcels.
- Limiting the Division of State Lands ability to enter into any contractual agreements with property owners without prior legislative appropriation or authorization.
- Prohibiting the acquisition of or commitment to purchase lands before adequate legislative authorization or appropriation are provided.
- Increasing the emphasis on using less-than-fee alternatives.
- Considering the effects of sea level rise on conservation lands currently in state ownership and for any future acquisitions that are located at or below 5 feet above sea level.
- Pursuing a sustained funding source for land management.
- Requiring managing agencies to take advantage of capital improvement dollars available during the time of acquisition.
- Expanding the land management options to allow for revenue opportunities to pay for the management of the land while not interfering with the intended purpose of the acquisition.
- Developing a database system to track all acquisition activity associated with Florida Forever.

Option 3 — Create an entirely new conservation lands program.

**Recommendation #8**— Advisory Councils and Committees

- It is recommended that the following councils and committees be retained with no modification:
  - Acquisition and Restoration Council
  - Florida Oceans and Coastal Council
  - Florida Water Resources Monitoring Council
  - Florida Greenways and Trails Council
  - Non-mandatory Land Reclamation Committee
  - Small Business Air Pollution Compliance Advisory Council
  - Technical Advisory Council for Water and Domestic Wastewater Operator Certification
  - Recreational Trails Program Advisory Committee
  - State Geologic Mapping Advisory Committee
  - Big Cypress Swamp Advisory Committee
- It is recommended that the Environmental Regulation Commission be retained with certain modifications. At the very least, the Legislature should consider providing for an attorney to be assigned exclusively to the commission who is not an employee of the department. Further, the Legislature may want to consider giving the commission the authority to hire outside consultants on a case-by-case basis to assure that the standards and rules adopted by the commission for use by the department are not unduly biased. The department's wealth of technical and scientific talent must also continue to be utilized as much as possible.
- It is recommended that the Legislature not repeal the statutory authority for the Committee on Landscape Irrigation and Florida-Friendly Design Standards found in s. 373.228, F.S. Instead, that section should be allowed to Sunset after the first mandated 5-year review in 2011.
- It is recommended that the statutory authority for the Land Use Advisory Committee found in s. 378.011, F.S., be repealed since this committee is no longer active and has served its purpose.

**Recommendation #9**— As indicated in the findings in this report, several OPPAGA and Auditor General Reports have severely criticized the department for not being able to determine the costs associated with the various permits issued by the department. With regard to permit fees in general, the department should be required to determine the costs associated with each permit identified in Rule 62-4, F.A.C., and submit a report to the Legislature by a date certain. Failure to comply could result in certain punitive actions by the Legislature such as placing portions of the department's budget in reserve until the DEP complies with that directive. Once the costs are established, the Legislature should consider statutorily establishing baselines for permit fees in order to ensure that some higher level of cost recovery is achieved. The Legislature may further, by statute, direct the department to adjust the permit fees every 2 years and tie that adjustment to an economic index such as the Consumer Price Index.

Specifically, with regard to the ERP permit fees and the drinking water program fees, the Legislature may want to require that those fees be increased to replace a specified percentage of the general revenue funds that is currently subsidizing those permit costs.

Drinking water systems currently do not pay operating fees, only fees for construction activities. Consideration should be given to establishing annual operating fees.

**Recommendation #10**— The DEP's performance measures attempt to measure the agency's progress; however, many of those measures could be restated or redesigned to better reflect the agency's actual performance and to more adequately document the shortfalls. It is recommended that OPPAGA undertake a review of the department's performance measures and report back to the Legislature prior to the 2009 legislative session with recommendations for improvements.

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## **Appendix**



## APPENDIX A

### FLORIDA GOVERNMENT ACCOUNTABILITY ACT

11.902 Definitions.--As used in ss. 11.901-11.920, the term:

(1) "State agency" or "agency" means a department as defined in s. 20.03(2) or any other administrative unit of state government scheduled for termination and prior review under this chapter.

(2) "Advisory committee" means any examining and licensing board, council, advisory council, committee, task force, coordinating council, commission, or board of trustees as defined in s. 20.03(3), (7), (8), (9), (10), or (12) or any group, by whatever name, created to provide advice or recommendations to one or more agencies, departments, divisions, bureaus, boards, sections, or other units or entities of state government.

(3) "Committee" means any Legislative Sunset Review Committee appointed pursuant to s. 11.903.

(4) "Joint committee" means the Legislative Sunset Committee appointed pursuant to s. 11.903.

11.903 Legislative Sunset Review Committees and the Joint Legislative Sunset Committee.--

(1) The Senate and House of Representatives may, pursuant to the rules of each house, appoint one or more standing or select committees as Legislative Sunset Review Committees to conduct independent reviews for each house regarding the agency sunsets required by ss. 11.901-11.920.

(2) The Senate and House of Representatives shall appoint a Joint Legislative Sunset Committee for the purposes of overseeing the agency review process required by ss. 11.901-11.920 and of making recommendations to the Legislature.

(3) Members of the committees and joint committee shall serve at the pleasure of their appointing presiding officer for a term of 2 years each or until the next general election, whichever occurs earlier.

(a) The Legislative Sunset Committee established under this subsection shall be a joint committee composed of 10 members: five members of the Senate appointed by the President of the Senate and five members of the House of Representatives appointed by the Speaker of the House of Representatives.

(b) The presiding officer of each house shall appoint a chair who shall serve as co-chair of the joint committee established under this subsection. Each co-chair shall serve at the pleasure of the appointing presiding officer for a term of 2 years or until the next general election.

(4) If a legislative member ceases to be a member of the house from which he or she was appointed,



the member vacates his or her membership on the committee or joint committee.

11.904      Staff.--The Senate and the House of Representatives may each employ staff to work for the joint committee on matters related to joint committee activities. The Office of Program Policy Analysis and Government Accountability shall provide primary research services as directed by the committee and the joint committee and assist the committee in conducting the reviews under s. 11.910. Upon request, the Auditor General shall assist the committees and the joint committee.

11.905      Schedule for reviewing state agencies and advisory committees.--The following state agencies, including their advisory committees, or the following advisory committees of agencies shall be reviewed according to the following schedule:

(1) Reviewed by July 1, 2008:

- (a) Statutorily created responsibilities of the Fish and Wildlife Conservation Commission.
- (b) Department of Agriculture and Consumer Services.
- (c) Department of Citrus, including the Citrus Commission.
- (d) Department of Environmental Protection.
- (e) Department of Highway Safety and Motor Vehicles.
- (f) Water management districts.

(2) Reviewed by July 1, 2010:

- (a) Department of Children and Family Services.
- (b) Department of Community Affairs.
- (c) Department of Management Services.
- (d) Department of State.

(3) Reviewed by July 1, 2012:

- (a) Advisory committees for the Florida Community College System.
- (b) Advisory committees for the State University System.
- (c) Agency for Workforce Innovation.
- (d) Department of Education.

- (e) Department of the Lottery.
- (4) Reviewed by July 1, 2014:
  - (a) Agency for Health Care Administration.
  - (b) Agency for Persons with Disabilities.
  - (c) Department of Elderly Affairs.
  - (d) Department of Health.
- (5) Reviewed by July 1, 2016:
  - (a) Department of Business and Professional Regulation.
  - (b) Department of Transportation.
  - (c) Department of Veterans' Affairs.
- (6) Reviewed by July 1, 2018:
  - (a) Advisory committees for the State Board of Administration.
  - (b) Department of Financial Services, including the Financial Services Commission.
  - (c) Department of Revenue.
- (7) Reviewed by July 1, 2020:
  - (a) Department of Corrections.
  - (b) Department of Juvenile Justice.
  - (c) Department of Law Enforcement.
  - (d) Department of Legal Affairs.
  - (e) Justice Administrative Commission.
  - (f) Parole Commission.
- (8) Reviewed by July 1, 2022:
  - (a) Executive Office of the Governor.
  - (b) Florida Public Service Commission.

Upon completion of this cycle, each agency shall again be subject to sunset review 10 years after its initial review.

#### 11.9055 Abolition of state agencies and advisory committees.--

- (1) An agency subject to review by the Legislature shall be abolished on June 30 following the date

of review specified in s. 11.905, unless the Legislature continues the agency or advisory committee; however, an agency may not be abolished unless the Legislature finds, pursuant to law, that all state laws the agency had responsibility to implement or enforce have been repealed, revised, or reassigned to another remaining agency and that adequate provision has been made for the transfer to a successor agency of all duties and obligations relating to bonds, loans, promissory notes, lease-purchase agreements, installment sales contracts, certificates of participation, master equipment financing agreements, or any other form of indebtedness such that security therefor and the rights of bondholders or holders of other indebtedness are not impaired.

(2) If the Legislature does not take action before the date of review to continue the agency or advisory committee, the agency shall submit its legislative budget request consistent with the provisions of chapter 216. Such agency shall continue to be subject to annual sunset review by the Legislature until the Legislature enacts legislation relating to the agency's continuation, modification, or termination.

11.906 Agency report to the Legislature.--Not later than July 1, 2 years preceding the year in which a state agency and its advisory committees are scheduled to be reviewed, the agency shall provide the Legislature with a report that includes:

(1) The performance measures for each program and activity as provided in s. 216.011 and 3 years of data for each measure that provides actual results for the immediately preceding 2 years and projected results for the fiscal year that begins in the year that the agency report is scheduled to be submitted to the Legislature.

(2) An explanation of factors that have contributed to any failure to achieve the legislative standards.

(3) The promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

(4) The extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which public participation has resulted in rules compatible with the objectives of the agency.

(5) The extent to which the agency has complied with applicable requirements of state law and applicable rules regarding purchasing goals and programs for small and minority-owned businesses.

(6) A statement of any statutory objectives intended for each program and activity, the problem or need that the program and activity were intended to address, and the extent to which these objectives have

been achieved.

(7) An assessment of the extent to which the jurisdiction of the agency and its programs overlap or duplicate those of other agencies and the extent to which the programs can be consolidated with those of other agencies.

(8) An assessment of less restrictive or alternative methods of providing services for which the agency is responsible which would reduce costs or improve performance while adequately protecting the public.

(9) An assessment of the extent to which the agency has corrected deficiencies and implemented recommendations contained in reports of the Auditor General, the Office of Program Policy Analysis and Government Accountability, legislative interim studies, and federal audit entities.

(10) The process by which an agency actively measures quality and efficiency of services it provides to the public.

(11) The extent to which the agency complies with public records and public meetings requirements under chapters 119 and 286 and s. 24, Art. I of the State Constitution.

(12) The extent to which alternative program delivery options, such as privatization, outsourcing, or insourcing, have been considered to reduce costs or improve services to state residents.

(13) Recommendations to the Legislature for statutory, budgetary, or regulatory changes that would improve the quality and efficiency of services delivered to the public, reduce costs, or reduce duplication.

(14) The effect of federal intervention or loss of federal funds if the agency, program, or activity is abolished.

(15) A list of all advisory committees, including those established in statute and those established by managerial initiative; their purpose, activities, composition, and related expenses; the extent to which their purposes have been achieved; and the rationale for continuing or eliminating each advisory committee.

(16) Agency programs or functions that are performed without specific statutory authority.

(17) Other information requested by the Legislature.

Information and data reported by the agency shall be validated by its agency head and inspector general before submission to the Legislature.

11.907 Legislative review.--Upon receipt of an agency report pursuant to s. 11.906, the joint committee may and the appropriate committee shall conduct a review of the agency and may direct the Office of Program Policy Analysis and Government Accountability to review the agency and its advisory committees, including an examination of the cost of each agency program, an evaluation of best practices and alternatives that would result in the administration of the agency in a more efficient or effective manner, an examination of the viability of privatization or a different state agency performing the functions, and an evaluation of the cost and consequences of discontinuing the agency. The reviews shall be comprehensive in scope and shall consider the information provided by the agency report in addition to information deemed necessary by the office and the appropriate committee or the joint committee. The Office of Program Policy Analysis and Government Accountability shall submit its report to the Legislature in a timeframe prescribed by the committee requesting the review. The Office of Program Policy Analysis and Government Accountability shall include in its reports recommendations for consideration by the Legislature.

11.908 Committee duties.--No later than March 1 of the year in which a state agency or its advisory committees are scheduled to be reviewed, the committee shall and the joint committee may:

(1) Review the information submitted by the agency and the reports of any independent reviews directed by the committee, including those conducted by the Office of Program Policy Analysis and Government Accountability.

(2) Consult with the Legislative Budget Commission, relevant substantive and appropriations committees of the Senate and the House of Representatives, the Governor's Office of Policy and Budgeting, the Auditor General, and the Chief Financial Officer, or their successors, relating to the review of the agency and its advisory committees.

(3) Hold public hearings to consider this information as well as other information and testimony that the committee or joint committee deems necessary.

(4) Present to the President of the Senate and the Speaker of the House of Representatives a report on the agencies and advisory committees scheduled to be reviewed that year by the Legislature. In the report, the committee shall include its specific findings and recommendations regarding the information considered pursuant to s. 11.910, make recommendations as described in s. 11.911, and propose legislation

as it considers necessary. In the joint committee report, the joint committee shall include its specific findings and recommendations regarding the information considered pursuant to s. 11.910 and make recommendations as described in s. 11.911.

Note.--Substituted by the editors for a reference to s. 11.90 to conform to context. Section 11.90 relates to the Legislative Budget Commission; s. 11.910 relates to information relevant for determination of whether a public need exists for continuation of a state agency.

11.910 Information for review.--The committee may consider information submitted pursuant to s. 11.906 as well as any additional information it considers relevant in determining whether a public need exists for the continuation of a state agency or its advisory committees or for the performance of any of the functions of the agency or its advisory committees.

11.911 Committee recommendations.--

(1) In its report on a state agency, the committee shall:

(a) Make recommendations on the abolition, continuation, or reorganization of each state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees.

(b) Make recommendations on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review.

(c) Propose legislation necessary to carry out the committee's recommendations under paragraph (a) or paragraph (b).

(2) In its report on a state agency, the joint committee shall:

(a) Make recommendations on the abolition, continuation, or reorganization of each state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees.

(b) Make recommendations on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review.

11.917 Procedure after termination.--

(1) Any unobligated and unexpended appropriations of an abolished agency or advisory committee shall revert on the date of abolition.

(2) Except as provided in subsection (4) or as otherwise provided by law, all money in a trust fund of an abolished state agency or advisory committee is transferred to the General Revenue Fund. Any provision of law dedicating the money to a trust fund of an abolished agency becomes void on the date of abolition.

(3)(a) If not otherwise provided by law, property in the custody of an abolished state agency or advisory committee shall be transferred to the Department of Management Services.

(b) If not otherwise provided by law, records in the custody of an abolished state agency or advisory committee shall be transferred to the Department of State.

(4) The Legislature recognizes the state's continuing obligation to pay bonds and all other financial obligations, including contracts, loans, promissory notes, lease purchase agreements, certificates of participation, installment sales contracts, master equipment financing agreements, and any other form of indebtedness, incurred by the state or any state agency or public entity abolished under ss. 11.910-11.920, and ss. 11.910-11.920 do not impair or impede the payment of bonds and other financial obligations, or any other covenant contained in the legal documents authorizing the issuance of debt or the execution of any other financial obligation in accordance with their terms. If the state or an abolished state agency has outstanding bonds or other outstanding financial obligations, the bonds and all other financial obligations remain valid and enforceable in accordance with their terms and subject to all applicable terms and requirements contained in the legal documents authorizing the issuance of debt or the execution of any other financial obligation. If not otherwise provided by law, the Division of Bond Finance of the State Board of Administration shall carry out all covenants contained in the bonds and in the resolutions authorizing the issuance of bonds, and perform all obligations required thereby. The state or a designated state agency shall provide for the payment of the bonds and all other financial obligations from the sources of payment specified in the resolution or legal documents authorizing the issuance or execution thereof in accordance with the terms of the bonds or other financial obligations, whether from taxes, specified revenues, or otherwise, until the bonds and interest on the bonds are paid in full and all other financial obligations are performed and paid in full. All funds or accounts established by laws or legal documents authorizing the issuance of bonds, or the execution of other financial obligations, shall remain with the

previously designated party, agency, or trustee. Any funds or accounts held by an abolished state agency shall be transferred to a designated successor agency or trustee in compliance with the resolution or legal documents applicable to the outstanding bonds or other financial obligations.

**11.918 Joint Legislative Sunset Committee; powers; assistance of state agencies.--**

(1) The Joint Legislative Sunset Committee may take under investigation any matter within the scope of a sunset review either completed or then being conducted by the joint committee, and, in connection with such investigation, may exercise the powers of subpoena by law and any other powers vested in a standing committee of the Legislature pursuant to s. 11.143.

(2) The joint committee may access or request information and request assistance of state agencies and officers. When assistance is requested, a state agency or officer shall assist the joint committee.

**11.919 Assistance of and access to state agencies.--**

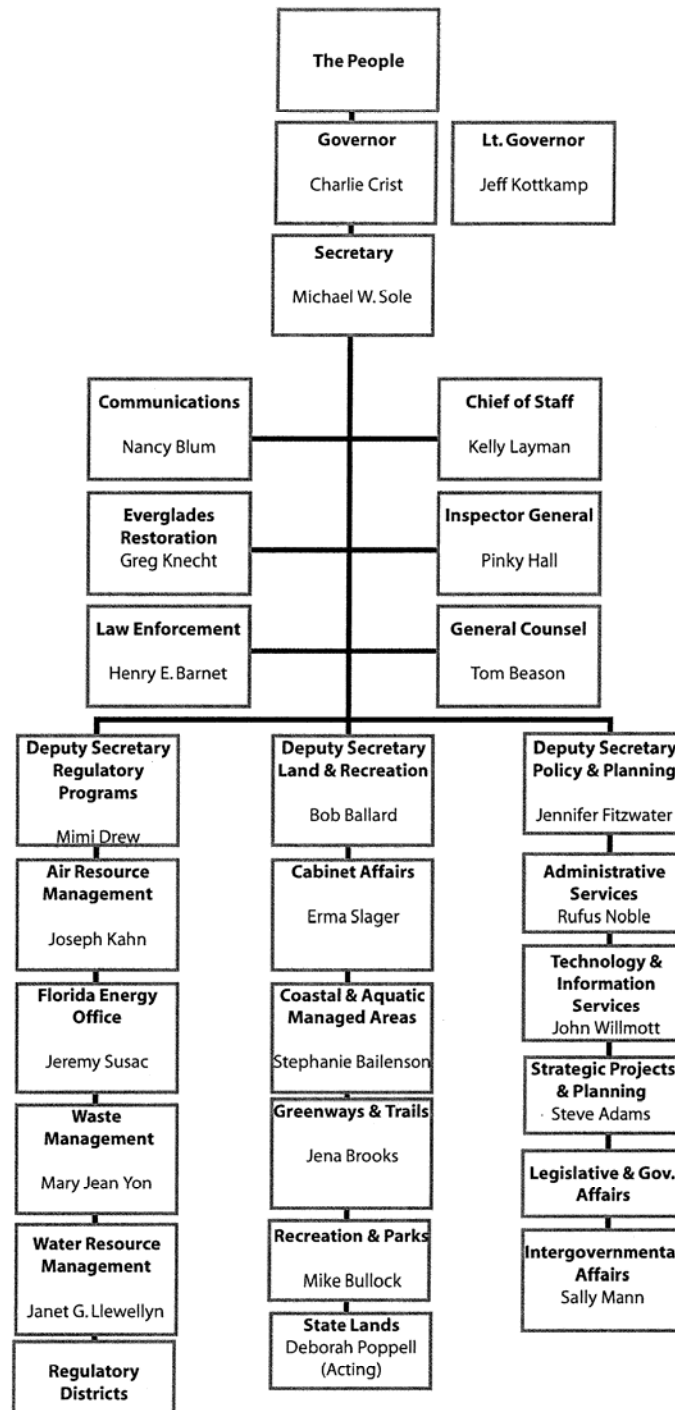
(1) The committee may access or request information and request the assistance of state agencies and officers. When assistance is requested, a state agency or officer shall assist the committee.

(2) In carrying out its functions under ss. 11.901-11.920, the committee or its designated staff member may inspect the records, documents, and files of any state agency.

**11.920 Saving provision.--**Except as otherwise expressly provided by law, abolition of a state agency does not affect rights and duties that matured, penalties that were incurred, civil or criminal liabilities that arose, or proceedings that were begun before the abolition.



Appendix B



Updated: 11/19/07





PPENDIX C

**DEP TRUST FUNDS**

*(Source: Trust Fund Status and Activity Reports, DEP, Sept. 2007)*

**Administrative Trust Fund**

*Revenue Source:* Intra-agency transfers from other trust funds and interest earnings on the investment of idle cash.

*Purpose of Fund:* To fund the administrative activities within the department.

**Air Pollution Control Trust Fund**

*Revenue Source:* Fees collected from asbestos removal permits, industrial pollution (Title V), air emissions operating permits, vehicle licenses, federal grants, and interest earnings on the investment of idle cash.

*Purpose of Fund:* To provide funding for mobile surface air pollution monitoring and control programs, odor and toxic air pollutant identification; monitoring and control activities; and other stationary source program activities.

**Coastal Protection Trust Fund**

*Revenue Source:* Penalties, judgments, damages recovered pursuant to s. 376.121, F.S.; fuel excise tax revenues levied, collected and credited pursuant to ss. 206.9935(1), F.S., and 206.9945(1)(a), F.S., and interest earnings on the investment of idle cash.

*Purpose of Fund:* To provide financial resources that are immediately available for cleanup and rehabilitation after a pollutant discharge, to prevent further damage by the pollutant, and to pay for damages, cleanup and restoration of waterfowl, wildlife, and other natural resources, and to provide funding for marine law enforcement and emergency cleanup response teams and equipment located at appropriate ports throughout the state for the purposes of cleaning oil and other toxic materials from coastal waters. Provide a temporary transfer to the Minerals TF to fund incidents of environmental damage or contamination when needed, not to exceed \$10 million, and provide loans to the Inland Protection TF for pollutant discharge prevention and removal pursuant to s. 376.11, F.S.

**Conservation and Recreation Lands Trust Fund**

*Revenue Source:* For FY 2007-08, 3.96 percent and beginning July 1, 2008, 3.52 percent of documentary stamp taxes; the first \$10 million collected annually from the severance tax on phosphate rock; proceeds of surplus land sales, and interest earnings on the investment of idle cash. For FY 2007-08, 10.05 percent and beginning July 1, 2008, 11.15 percent of these documentary stamp tax revenues go to the Fish and Wildlife Conservation Commission State Game TF for land management.

*Purpose of Fund:* To provide for public ownership of natural areas for the purpose of maintaining unique natural resources; protecting air, land, and water quality; promoting water resource development; promoting restoration activities on public lands; and providing lands for natural resource based recreation. 1.5 percent of cumulative funds ever deposited in P2000 TF and the Florida Forever TF shall be made available in the CARL TF for the purpose of management, maintenance, and capital improvements for lands acquired pursuant to s. 259.032(11), F.S. Up to one-fifth of the funds are reserved for interim management of acquisitions and for

associated contractual services. Payments in lieu of taxes to qualifying counties and local governments for all actual tax losses incurred as a result of Board of Trustees acquisitions. Management of lands and related costs, activities, and functions.

**Drinking Water Revolving Loan Trust Fund**

*Revenue Source:* Transfer of General Revenue funds, federal grants, loan repayments, and interest earnings on the investment of idle cash.

*Purpose of Fund:* To provide low-interest loans and grants for planning, engineering design, and construction of public drinking water systems and improvements to such systems, funding for compliance activities, certification programs, and source water protection programs, and to fund the administration of loans by the department.

**Ecosystem Management and Restoration Trust Fund**

*Revenue Source:* Funds received as a result of actions against any person for a violation of ch. 373, F.S., for injury to or destruction of coral reefs, from other sources specified by law, transfers from documentary stamp taxes for beaches, transfers from 2 percent sales tax collection and interest earnings on the investment of idle cash.

*Purpose of Fund:* To fund the detailed planning and implementation of programs for the management and restoration of ecosystems. Funding the development and implementation of surface water improvement and management plans and programs under ss. 373.451-373.4595, F.S. Fund activities to restore polluted areas of the state to their condition before pollution occurred or otherwise enhance pollution-control activities. Fund activities to restore or rehabilitate injured or destroyed coral reefs. Funding activities by the department to recover moneys as a result of actions against any person for a violation of ch. 373, F.S. Fund activities to address erosion control, beach preservation, beach restoration and beach nourishment.

**Environmental Laboratory Trust Fund**

*Revenue Source:* Contracts with water management districts and transfers from other DEP trust funds, and interest earnings on the investment of idle cash.

*Purpose of Fund:* To fund the operations of the DEP environmental laboratory.

**Florida Forever Trust Fund**

*Revenue Source:* Bond proceeds, interest earnings on the investment of idle cash.

*Purpose of Fund:* Purchases of lands and interest in lands of the type acquired through the P2000 program, but focus on acquiring parcels to facilitate ecosystem management, water resource development, water supply development, the implementation of surface water improvement and management plans, and the provision of green space and recreation opportunities.

**Florida Preservation 2000 Trust Fund**

*Revenue Source:* Bond proceeds (s. 373.045, F.S.), sale of surplus land [s. 259.101(6)(c), F.S.], and earnings on the investment of idle cash.

*Purpose of Fund:* To provide a dedicated funding source for the expressed purpose of purchasing any lands situated in such areas of critical state concern as environmentally endangered lands or outdoor recreation lands.

To protect the integrity of ecological systems, preserve fish and wildlife habitat, recreational space, and water recharge areas

**THERE IS NO ACTIVITY IN THIS FUND.**

**Grants and Donations Trust Fund**

*Revenue Source:* Various grant revenues and donations, and interest earnings on the investment of idle cash.

*Purpose of Fund:* A broad-based fund to be used for various environmental and natural resource program purposes for which federal funds were intended. Serves as depository for federal grant funds received by the department and to assist in tracking and monitoring the use of federal funds that are not otherwise deposited directly into a separate trust fund.

**Inland Protection Trust Fund**

*Revenue Source:* Initial registration fee (s. 376.303, F.S.) annual renewal registration fee for every in-ground or stationary aboveground petroleum storage tank (ss. 376.303 and 376.072, F.S.) having a capacity of 550 or more gallons. Excise taxes on petroleum products pollutants in accordance with ss. 206.9935 and 206.9945, F.S., loans from the Coastal Protection TF and earnings on the investment of idle cash.

*Purpose of Fund:* Fund will enable response without delay to incidents of inland contamination related to the storage of petroleum products to protect the public and minimize environmental damage. To investigate and assess contaminated sites, restore or replace potable water supplies, cleanup and rehabilitate contaminated sites, maintain and monitor contaminated sites and supervise storage tank compliance verification program. Transfer of interest earnings to the Water Quality Assurance TF to be made at the discretion of the department pursuant to s. 376.3071(8), F.S.

**Internal Improvement Trust Fund**

*Revenue Source:* Agriculture, marina and dock leases, commercial upland leases, proceeds from the sales of surplus lands, fines, various fees from land transactions, and interest earnings on the investment of idle cash.

*Purpose of Fund:* To provide for the acquisition, management, administration, protection and conservation of state-owned lands.

**Invasive Plant Control Trust Fund**

*Revenue Source:* 2.28 percent of documentary stamp taxes (capped at \$34.1 million in FY 2007-08), transfer of \$6.3 million gas tax revenues from Fuel Tax Collection TF, \$2 from each non-commercial vessel registration except class A-1, and 40 percent of registration fees for commercial vessels, and interest earnings on the investment of idle cash.

*Purpose of Fund:* To achieve eradication or maintenance control of invasive exotic plants on public lands; to assist state and local government agencies in the development and implementation of coordinated management plans for the eradication; to contract or enter into agreements with entities for research concerning control agents; production and growth of biological control agents; 20 percent for the dollars credited to the fund to be used for the purpose of controlling nonnative invasive plant species on public lands.

**Lake Okeechobee Protection Trust Fund**

*Revenue Source:* Funds as appropriated by the Legislature and as provided for by general law and interest earnings on the investment of idle cash.

*Purpose of Fund:* To restore and protect Lake Okeechobee and downstream receiving waters.

**Land Acquisition Trust Fund**

*Revenue Source:* Documentary stamp taxes (capped at \$110.9 million in FY 2007-08), annual transfer from the CARL TF for the payment of debt service on CARL bonds, sale of surplus land, donations, fees, charges and other moneys as authorized by appropriate act of the Legislature and interest earnings on the investment of idle cash.

*Purpose of Fund:* To facilitate and expedite the acquisition of land, water areas, and related resources required to accomplish the purpose stated in the Outdoor Recreation and Conservation Act. Moneys not pledged for rentals or debt services as required by s. 375.041, F.S., may be expended to acquire land, water areas, and related resources and to construct, improve, enlarge, extend, operate and maintain capital improvements and facilities in accordance with the plan.

**Minerals Trust Fund**

*Revenue Source:* All fees charged permittees under ss. 377.24(1), 377.2408(1), and 377.2425(1)(b), F.S.; penalties, judgments, recoveries, reimbursements, and other fees and charges related to incidents which may effect safety or threaten to cause environmental damage or contamination as a result of incidents involving petroleum exploration and production activities; the transfer of severance tax revenues from the Department of Revenue, and interest earnings on the investment of idle cash. Sections 376.11 and 376.40, F.S., allow for the temporary transfer from Florida Coastal Protection TF not to exceed \$10 million as needed for remedial action.

*Purpose of Fund:* To serve as a repository for designated revenues to provide for prompt investigation and assessment of surface or underground contamination or other permit violations; prompt remedial action to repair, replace, or restore to a safe condition test sites, wells and facilities at the affected site or location; rehabilitation of contamination at sites; maintenance, monitoring, inspection and supervisions of sites or facilities that have been repaired, replaced or restored; to reclaim lands disturbed by the severance of minerals; to fund the geological survey of the state; and to fund the regulation of oil and gas exploration.

**Nonmandatory Land Reclamation Trust Fund**

*Revenue Source:* Lien foreclosures, land sales, phosphogypsum stack registration fees, interest earnings on the investment of idle cash, and transfers from the Minerals TF.

*Purpose of Fund:* For the reclamation and acquisition of unreclaimed lands disturbed by phosphate mining and not subject to mandatory reclamation; the abatement of an imminent hazard; for closing an abandoned phosphogypsum stack system, basic management or protection of reclaimed, restored, or preserved phosphate lands; for the implementation of the NPDES permitting program as it applies to phosphate mining and beneficiation facilities, phosphate fertilizer production facilities, phosphate loading and handling facilities; the regulation of dams; and the phosphogypsum management program.

**Permit Fee Trust Fund**

*Revenue Source:* Permitting fees, fines, forfeitures, judgments and interest earnings on the investment of idle cash.

*Purpose of Fund:* To provide funding for the operating cost of permitting, field services, and support activities.

**Save Our Everglades Trust Fund**

*Revenue Source:* Funds from the P2000 TF in excess of remaining appropriation balances at June 30, 2000, for FY 2001-02, \$75 million; for FY 2002-03, \$100 million from bond reserve accounts, and for FY 2003-04, \$100 million from bond reserve accounts; transfers from the General Revenue Fund; transfers from the Florida Forever TF FY 2000-01 and FY 2001-02 only; Federal funds appropriated by Congress; any additional funds appropriated by the Legislature and gifts designated for implementation of the comprehensive plan; FY 2005-06 through FY 2009-10 proceeds from the sale of Everglades Restoration Bonds not exceeding \$125 million per fiscal year; funds for payment of debt service for Everglades restoration bonds; and interest earnings on the investment of idle cash.

*Purpose of Fund:* To implement the comprehensive plan as defined in s. 373.347(2)(a), F.S., serve as a repository for state, local and federal project contributions in accordance with s. 373.470(4), F.S.

**Solid Waste Management Trust Fund**

*Revenue Source:* Waste tire fees, used oil transported, recycling or collector registration fees, and interest earnings on the investment of idle cash.

*Purpose of Fund:* To fund the solid waste management activities of the department and other state agencies: 40 percent for providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents and implementing education programs; 40 percent for funding a grant program pursuant to s. 403.7095, F.S.; 11 percent for funding to DACS for mosquito control; 4.5 percent for funding research and training programs relating to solid waste management; 4.5 percent for funding to DOT for litter prevention and control programs.

**State Park Trust Fund**

*Revenue Source:* Funds received from transfers from the Land Acquisition TF, park fees and charges, donations, rentals, sales of goods and services, concession revenues, sales taxes collected, perquisites, fines, forfeits, judgments, timber sales and interest earnings on the investment of idle cash.

*Purpose of Fund:* The funds collected shall be expended for the administration, maintenance, preservation and improvement of any monument, historic memorial, or state parks.

**Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund**

*Revenue Source:* Transfer of General Revenue funds, federal grants, loan repayments, fees from loan servicing and interest earnings on the investment of idle cash.

*Purpose of Fund:* To provide loans to local governments to assist in the planning, design, and construction of sewage treatment facilities and in the acquisition of land necessary for such construction.

**Water Management Lands Trust Fund**

*Revenue Source:* 4.20 percent of documentary stamp taxes (capped at \$60.5 million in FY 2007-08), interest earnings on the investment of idle cash, and transfers of penalty assessment revenues collected by the water management districts.

*Purpose of Fund:* To provide funds for the department's cost of administration of the fund and to the five water management districts for the purpose of land acquisition, management, maintenance, capital



improvements, and administration of purchased lands.

**Water Protection and Sustainability Program Trust Fund**

*Revenue Source:* \$80 million from documentary stamp taxes and interest earnings on the investment of idle cash.

*Purpose of Fund:* To provide funding assistance to the water management districts for the implementation of alternative water supply programs as provided in s. 373.1961, F.S. To provide funding for the implementation of best management practices and capital project expenditures necessary for the implementation of the goals of the TMDL program associated with agricultural and nonagricultural nonpoint sources. To provide funding for surface water restoration activities in water management district designated priority water bodies. To provide funding for the Disadvantaged Small Community Wastewater Grant Program as provided in s. 403.1838, F.S.

**Water Quality Assurance Trust Fund**

*Revenue Source:* Excise taxes on pollutants, acid battery taxes, drycleaning gross receipt taxes, documentary stamp taxes, annual dry cleaner facility registration fees, and operator certification licenses, permits and fees, legal recoveries, reimbursement, transfer of interest earnings from the Inland Protection TF to be made at the discretion of the department pursuant to s. 376.3071, F.S., transfer of interest earnings from the Coastal Protection TF pursuant to s. 376.11, F.S., and interest earnings on the investment of idle cash.

*Purpose of Fund:* To serve as a broad-based fund for use in responding to incidents of contamination (except petroleum products) that pose a serious danger to the quality of groundwater and surface water resources or otherwise pose a serious danger to the public health, safety, or welfare. To provide dedicated funding for the monitoring and maintenance for the cleanup and restoration of potable water of any site involving spills, discharges, or escapes of pollutants or hazardous substances which occur as a result of procedures taken by private and governmental entities involving the storage, transportation, and disposal of such products.

**Working Capital Trust Fund**

*Revenue Source:* Intra-agency transfers from other trust funds, refunds and interest earnings on the investment of idle cash.

*Purpose of Fund:* To provide for the ongoing operation of the department's data processing center and future information technology resource acquisitions.

## The Florida Legislature

### OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY

Gary R. VanLandingham, Ph.D., Director

### MEMORANDUM



September 5, 2007

**DATE:**

**TO:** Senator Don Gaetz, Co-Chair Joint Legislative Sunset Committee  
Representative Kevin Ambler, Co-Chair Joint Legislative Sunset Committee

**CC:** Rick Mahler, Staff Director Joint Legislative Sunset Committee  
Jaime Deloach, Staff Director Senate Committee on General Government Appropriations Wayne Kiger, Staff  
Director Senate Committee on Environmental Preservation and Conservation Tom Hamby, Council Director  
House Environmental and Natural Resources Council

**FROM:** Kara Collins-Gomez, Staff Director of Government Operations (850/487-4257)  
Larry Novey, Chief Legislative Analyst (850/487-3768)  
Darwin Gamble, Senior Legislative Analyst (850/487-9247)

**RE:** Department of Environmental Protection Advisory Committees

**Summary**

In response to a request from the Joint Legislative Sunset Committee, we have reviewed the advisory committees of the Department of Environmental Protection (DEP). We reviewed the department's advisory committees and identified and examined their purposes, activities, and related costs and assessed the need for continuation. 1

We found that most Department of Environmental Protection Advisory Committees meet the criteria for continuation. Specifically, we found that the department had 16 advisory committees in Fiscal Year 2006-07 that incurred travel, staff, and other expenses totaling \$252,725. In general, these advisory committees served a public purpose by providing the department with stakeholder input or expertise in a variety of matters, including agency rule development and the purchase of conservation and recreation lands. Further, four of these committees are required by federal law or regulations and cannot be eliminated without jeopardizing federal funding to the state. Three advisory committees were dissolved by state law effective July 1, 2007.

The Legislature may wish to consider continuing 12 of the 13 remaining advisory committees because they generally provide useful citizen input into agency decision making. However, the Legislature should repeal the statute creating the Land Use Advisory Committee. This committee, which was created to evaluate the lands mined or disturbed by the severance of phosphate rock and develop a general reclamation plan, has achieved its purpose and is no longer active.

Included in our review were advisory committees that are defined in ss. 20.03(3), (7), (8), (9), (10), and (12), F. S., or were created through executive order.

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Department of Environmental Protection Advisory Committees

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**Background**

The Department of Environmental Protection's mission is controlling pollution, protecting natural resources, providing resourced-based recreation, and acquiring, managing, and divesting state-owned lands. The department also implements federal laws, such as the Clean Air Act, the Clean Water Act, and the Coastal Zone Management Act.

The department reported having 16 advisory committees, 10 created by statute and 6 created by the department, that incurred travel, staff, and other expenses totaling \$252,725 in Fiscal Year 2006-07 (see Exhibit 1).

**Exhibit 1**

**DEP Reported \$252,725 in Costs for Advisory Committees in Fiscal Year 2006-07**

Advisory Committee	Reported Cost
Acquisition and Restoration Council	\$72,635
Florida Oceans and Coastal Council	38,900
Innovative Technologies Review Committee	36,000
Florida Water Resources Monitoring Council	26,900
Pollutant Trading Policy Advisory Committee	26,000
Florida Greenways and Trails Council	22,500
Environmental Regulation Commission	13,790
Committee on Landscape Irrigation and	
Florida-Friendly Design Standards	11,000
Non-Mandatory Land Reclamation Committee	1,220
Small Business Air Pollution Compliance	
Advisory Council	1,200
Technical Advisory Council for Water and	
Domestic Wastewater Operator Certification	1,120
Recreational Trails Program Advisory	
Committee	1,110
State Geologic Mapping Advisory Committee	350
Caloosahatchee-St. Lucie Rivers Corridors	
Advisory Committee	0
Big Cypress Swamp Advisory Committee	0
Land Use Advisory Committee	0
Total	\$252,725

Source: Department of Environmental Protection.

and Coastal Council, and the Innovative Technologies Review Committee,

As shown in Exhibit 1, three committees, the Acquisition and Restoration Council, the Florida Oceans

accounted for over half of the total cost reported during the fiscal year.

- The Acquisition and Restoration Council recommends conservation and recreation land for the Governor and Cabinet to purchase under the Florida Forever Program. This council meets several times a year and is supported by department staff and Florida Natural Areas Inventory employees.<sup>2</sup>
- The Florida Oceans and Coastal Council was required by statute to prepare a comprehensive oceans and coastal resource assessment during Fiscal Year 2006-07.
- The Innovative Technologies Review Committee evaluated projects intended to assist in beach preservation and nourishment until the committee's dissolution on July 1, 2007.

However, three committees were either abolished or scheduled by law to be abolished by July 1, 2007 (Pollutant Trading, Policy Advisory Committee, the Caloosahatchee-St. Lucie Rivers Corridors Advisory Committee, and the Innovative Technologies Review Committee). These committees incurred \$62,000 in costs during Fiscal Year 2006-07.

See Appendix A for more information on the department's advisory committees.

### **Assessment**

In assessing department advisory committees, we considered various criteria, including whether the committees

- serve a public purpose;

<sup>2</sup> The Florida Natural Areas Inventory (FNAI) is a non-profit organization administered by Florida State University. FNAI gathers, interprets, and disseminates information critical to the conservation of Florida's biological diversity and is funded through contracts and grants, which currently include work for the Florida Department of Environmental Protection, the Florida Fish and Wildlife Conservation Commission, and other state and federal agencies.

*Section 20.52(1), F.S.*

Department of Environmental Protection Advisory Committees September 4,

2007

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- facilitate public participation in an agency's activities and provide agency staff with stakeholder expertise without duplicating the efforts of other entities;
- are mandated by federal law; and
- fulfill their public purposes.<sup>4</sup>

We concluded that most of the department's advisory committees serve a public purpose by providing the department with stakeholder input or expertise in a variety of matters. For example, the Environmental Regulation Commission is the department's standard-setting body for air, water and solid waste pollution control rules and regulations; the Greenways and Trails Council advises the department on decisions and policies for developing the state's greenways and trails system; and the Non-Mandatory Land Reclamation Committee reviews landowners' reclamation plans for lands disturbed by phosphate mining prior to July 1, 1975. Further, four of these advisory committees are required by federal laws or regulations (Small Business Air Pollution Compliance Advisory Council; Technical Advisory Council for Water and Domestic Wastewater Operator Certification; State Geologic Mapping Advisory Committee and Recreational Trails Program Advisory Committee). As these four advisory committees are mandated by federal law or regulations, abolishing them could result in the loss of approximately \$2 million in federal funds.

However, we recommend that the Legislature repeal s. 378.011, *Florida Statutes*, which would abolish the department's Land Use Advisory Committee. The Legislature initially created this committee to evaluate the lands mined or disturbed by the severance of phosphate rock, develop a general reclamation plan, and provide a report to the Department of Natural Resources, one of DEP's predecessor agencies,

by July 1, 1979.<sup>5</sup> Department managers confirmed that the committee's purpose has been fulfilled and that it is no longer active. Further, the Legislature repealed the statutory provisions that specified the committee's duties in 2000.<sup>6</sup>

In conclusion, the Legislature and department may wish to consider continuing 12 of the department's remaining 13 committees. Although department staff could implement state policies without these committees, they generally provide useful citizen input into agency decision making and eliminating them would not significantly reduce state costs.

<sup>5</sup> Ch. 78-136, *Laws of Florida*

<sup>6</sup> Ch. 2000-158, *Laws of Florida*.

## Most DEP Advisory Committees Meet the Criteria for Continuation

September 4, 2007

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**Appendix A****The Department of Environmental Protection Had 16 Advisory Committees in Fiscal Year 2006-07**

Advisory committees are listed in order of costs (highest to lowest) incurred in Fiscal Year 2006-07.

Advisory Committee	Purpose	Agency Reported Activities	Impact of Abolition
Acquisition and Restoration Council	Reviews Florida Forever acquisition proposals, land uses, and management plans covering Board of Trustees lands. The council is authorized by s. 259.035, F.S.	The council reviewed and recommended approximately 2 million acres for approval on the Florida Forever list; 610,000 acres have been acquired. The council also oversees management of 3.375 million acres of state lands. The council holds meetings and public hearings about 12 times each year.	Some entity would need to perform these activities if the Florida Forever Program is continued. Accordingly, it is doubtful whether eliminating the council would result in cost savings. Eliminating the council would require repealing s. 259.035, F. 5', and amending other related statutes.
Florida Oceans and Coastal Council	The council's reported cost for Fiscal Year 2006-07 was \$72,635. Assists the state in identifying new research strategies to maximize protection and conservation of ocean and coastal resources while recognizing their economic benefits. The council reviews existing research and prepares a Florida Ocean and Coastal Scientific Research Plan. Authorized by Ch. 161, Part IV,	The council updates and publishes a research plan annually and recommends projects that meet certain criteria. It typically meets about six times per year.	Department managers assert that abolishing the council would reduce coordination of the state's ocean and coastal research activities.
Innovative Technologies Review Committee	The council's reported cost for Fiscal Year 2006-07 was \$38,900. Assists the department in evaluating projects and technologies that have the potential to reduce costs, conserve beach sediment, extend the life of beach nourishment projects, and improve sand bypassing on	critically eroded beaches. The committee's reported cost for Fiscal Year 2006-07 was \$36,000.	The committee has evaluated the projects.

None. The committee's work was completed by July 1, 2007, and the committee was abolished.



## Most DEP Advisory Committees Meet the Criteria for Continuation

September 4, 2007

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Advisory Committee	Purpose	Agency Reported Activities	Impact of Abolition
Florida Water Resources Monitoring Council	Improves the standardization and sharing of water quality information within state and local governments within Florida. Authorized by s. 373.026(3), F. S., the council facilitates the sharing of water quality information among multiple entities.	The committee has developed a strategic plan that will standardize the required <i>metadata elements</i> within a water quality database. The council generally meets quarterly.	Would reduce public input into water resource monitoring and could hinder sharing of information among state agencies and local governments.
Pollutant Trading Policy Advisory Committee	The council's reported cost for Fiscal Year 2006-07 was \$26,900. Assists the department in developing a report to the Legislature regarding water pollutant trading and establishing and implementing total maximum daily loads (TMDL).	The committee completed its report in December 2006.	None. This advisory committee was required by s. 403.067, F. S. Since the required report was completed, the committee has been abolished.
Florida Greenways and Trails Council	The committee's reported cost for Fiscal Year 2006-07 was \$26,000. Advises the department in the execution of its powers and duties under the Florida Greenways and Trails Act. Provides stakeholder participation as required by s. 260.0142, F. S.	The council reviews and approves all greenways and trails acquisitions, designations, and prioritization maps. The council meets four times a year.	Would reduce public input in the development of greenways and trails.
Environmental Regulation Commission	The council's reported cost for Fiscal Year 2006-07 was \$22,500. Adopts rules that set environmental standards for air, water quality, and solid waste. Section 403.804, F. S. establishes the commission as the department's standard-setting authority for pollution control rules.	The commission complies with the legislative mandate to exercise the standard-setting authority for the department. The commission schedules monthly meetings, but may meet less often.	The Legislature would have to designate another entity to set standards relating to air pollution, water quality, and waste management.
	The commission's reported cost for Fiscal Year 2006-07 was \$13,790.		

## Most DEP Advisory Committees Meet the Criteria for Continuation

September 4, 2007

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Advisory Committee	Purpose	Agency Reported Activities	Impact of Abolition
Committee on Landscape Irrigation and Florida-Friendly Design Standards	Wastewater Operator Certification	Develops landscape and xeriscape design standards for new construction. Required by s. 373.228, F. ~q. The committee is still working on guidelines. Standards are reviewed every five years and modified as needed.	The committee developed design standards in early 2007. The committee will be reactivated when the standards are reviewed every five years.
Non-Mandatory Land Reclamation Committee		The committee's reported cost for Fiscal Year 2006-07 was \$11,000. Advises the department on non-mandatory land reclamation; recommends approval, modification or denial of reclamation grant applications. The committee is required by s. 378.033,	The committee receives public input for the prioritization of funding of reclamation grant applications. The committee meets at least once a year.
Small Business Air Pollution Compliance Advisory Council		The committee's reported cost for Fiscal Year 2006-07 was \$1,220. Advises the department on the effectiveness of its Small Business Environmental Assistance Program (SBEAP), including difficulties encountered by small businesses, and the degree and severity of enforcement; reviews regulatory information to ensure that the small business community understands it; makes periodic reports to the Administrator of the U.S. Environmental Protection Agency. This council is required by Section 507 (e) of the federal Clean Air Act.	The council renders advisory opinions concerning the effectiveness of the SBEAP, and reviews all compliance materials that the program creates for Florida businesses. In addition, the council provides a direct link to the small business community, which allows for a realistic perspective of issues and needs. It also provides a gauge of program effectiveness. The council meets annually.
Technical Advisory Council for Water and Domestic		The council's reported cost for Fiscal Year 2006-07 was \$1,200. Advises the department's Operator Certification Program. Authorized by s. 403.87, F. S.	Meets statutory requirements by providing expertise on water and wastewater treatment. The council meets upon the request of the chair, a majority of its members, or the department secretary. The last

meeting was in  
September 2006.

No entity would periodically review the design standards unless the Legislature designated one. Continuation depends on legislative interest in standards.

Could result in loss of technical expertise and citizen input into land reclamation decisions.

Abolition would put the state out of compliance with federal law. Could result in loss of federal funds as council is required by federal regulations.

The U.S. *Environmental Protection Agency* strongly recommended such a council as a way to meet stakeholder requirements in federal regulations. Without a public participation element, the state could lose federal funds.

Most DEP Advisory Committees Meet the Criteria for Continuation  
September 4, 2007

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Recreational Trails Program Advisory Committee	Advises the department's Office of Greenways and Trails on the Federal Highway Administration's Recreational Trails Program through development of scoring criteria, scoring of applications, and assisting with development of statewide trails education master plan. Required by 23 U.S.C. 206.	provide a report by July 1, 1979. Authorized by s. 378.011, FS.	The committee satisfies requirements of 23 U.S.C. 206 by recommending that certain entities receive grants from the federal Recreational Trails Program. Federal law requires the committee to meet at least once a year.
State Geologic Mapping Advisory Committee	The committee's reported cost for Fiscal Year 2006-07 was \$1,110. Assists the State Geologic Survey in setting geologic mapping priorities for Florida. Required by the Federal Law to provide input to the State Geological Survey for STATEMAP funding.		The committee has provided input to the State Geologic Survey to assist with statewide geologic mapping needs. The council meets annually.
Caloosahatchee-St. Lucie Rivers Corridors Advisory Council	The committee's reported cost for Fiscal Year 2006-07 was \$350. Prepares a report with recommendations regarding the high-level impacts of discharges from Lake Okeechobee on the St. Lucie and Caloosahatchee estuaries.		The committee completed its report in February 2007.
Big Cypress Swamp Advisory Committee	There were no reported costs in Fiscal Year 2006-07. Reviews hydrocarbon permit drilling applications and makes recommendations for permit conditions to the department's Florida Geological Survey (FGS). The committee is authorized by s. 377.42,		The committee helps ensure that environmental concerns are considered with recommendations to the FGS for permit conditions as required by law. The committee meets only when a new oil exploration well is proposed. The last meeting was in 1989.
Land Use Advisory Committee	There were no reported costs in Fiscal Year 2006-07. Evaluate the lands mined or disturbed by the severance of phosphate rock, develop a general reclamation plan, and		Report completed by July 1, 1979; committee has been inactive since that time.

Abolishing the committee would make the state ineligible for federal funds under this program.

Abolishing the committee would make the state ineligible for federal funds under this program.

Although drilling applications are rare, the committee is available to review them when they materialize. Predicting the frequency of applications is difficult. An application was filed but withdrawn in 2006. Abolition would require repealing s. 377.42, F.S.

not met since 1979. The Legislature would have to repeal s. 378.011, F.S.

None. The council expired in 2007.

None. The committee's purpose has been accomplished and it has

Appendix E

There were no reported costs in  
Fiscal Year 2006-07.

Source: OPPAGA review of the *Florida Statutes* and information from the Department of Environmental  
Protection.

## The Florida Legislature

OFFICE OF PROGRAM POLICY  
ANALYSIS AND GOVERNMENT  
ACCOUNTABILITY

Gary R. VanLandingham, Ph.D., Director



### MEMORANDUM

October 31, 2007

**DATE:**

**TO:** Senator Don Gaetz, Co-Chair Joint Legislative Sunset Committee  
Representative Kevin Ambler, Co-Chair Joint Legislative Sunset Committee

**CC:** Rick Mahler, Staff Director Joint Legislative Sunset Committee  
Jaime DeLoach, Staff Director Senate Committee on General Government Appropriations Wayne Kiger,  
Staff Director Senate Committee on Environmental Preservation and Conservation  
Tom Hamby, Council Director House Environmental and Natural Resources Council

**FROM:** Kara Collins-Gomez, Staff Director of Government Operations (850/487-4257)  
Larry Novey, Chief Legislative Analyst (850/487-3768)

**RE:** **Department of Environmental Protection, Division of State Lands Options for Legislative  
Consideration**

#### Summary

To support the Sunset Review process, the Legislature directed OPPAGA to examine the Department of Environmental Protection (DEP). 1 This memo is part of a series that reviews the department's operations, and focuses on the Division of State Lands and its purpose, organization, responsibilities, resources, and performance. The memo also offers options for legislative consideration.

OPPAGA developed five policy options for the Legislature to consider regarding DEP's land acquisition activities. These options include (1) continuing the Florida Forever Program but directing the department to make improvements to address identified problems; (2) placing the program on hiatus for one year until operational issues are resolved; (3) creating a new program to succeed Florida Forever; (4) not reauthorizing a replacement program if Florida Forever expires as anticipated; or (5) discontinuing the current program. For each option, we describe the considerations, costs, advantages, and disadvantages.

Sections 11.901-11.920, F.,S.

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Department of Environmental Protection, Division of State Lands

Options for Legislative Consideration

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### **Purpose, Organization, and Responsibilities**

The Division of State Lands acquires land for conservation, recreation, water resource protection and other state needs and helps control the growth of upland and aquatic plant species. The division oversees approximately 11 million acres, including more than 7,000 lakes and 4,510 islands. The division leases lands to state agencies for parks, forests, wildlife management areas, historic sites, educational facilities, vegetable farming, and mineral, oil, and gas exploration.

The division is organized into three programs: Land Administration, Land Management, and Invasive Plant Control. These programs contain five bureaus and one office.

#### **The Bureau of Public Land Administration**

oversees the disposition (e.g., sale or transfer) of state surplus lands, reviews the implementation of land management plans, and ensures compliance with lease conditions.

The **Bureau of Appraisal** oversees and manages the appraisal process to determine the fair market value of land being considered for acquisition.

- **The Bureau of Land Acquisition** negotiates the price and terms for land purchases and facilitates closings to complete transactions and acquire title to lands.
- **The Bureau of Survey and Mapping** determines land and water boundaries, performs survey and mapping services for land acquisition programs, and maintains a public lands inventory.

#### **The Bureau of Invasive Plant Management**

coordinates and funds statewide programs to control invasive aquatic and upland plants on state lands and waterways.

**The Office of Environmental Services** provides staff for the Acquisition and Restoration Council, coordinates and conducts land management audits, and provides comments on proposed land uses and projects affecting natural resources of state owned lands. 2

A major initiative of the Division of State Lands is the Florida Forever program, which is **the** state's current environmental land acquisition program. In addition to increasing environmental acquisitions, Florida Forever program goals include promoting environmental restoration; water resource development and supply; increased public access; public lands management and maintenance; and increased protection of land by acquisition of conservation easements. It has been estimated that the Florida Forever program will acquire 641,000 total acres before its anticipated expiration in 2010. As of July 2007, the program was about 82,000 acres away from that estimate, having purchased 559,189 acres at a cost of \$2,074,916,179. These purchases are financed through bonds, with debt service paid with a portion of documentary stamp tax revenue. The Legislature has limited these bond issues to \$300 million in any given year. As shown in Exhibit 1, the division uses a statutory formula to distribute Florida Forever funds to state agencies and water management districts for purchasing land.

The Acquisition and Restoration *Council* has sole responsibility **for** evaluating, selecting, and ranking state land acquisition projects for the Florida Forever program. The *council* annually reviews all Florida Forever acquisition proposals, decides which proposals should *receive* further *evaluation*, determines the final project boundaries, and groups Florida Forever projects.



Department of Environmental Protection, Division of State Lands  
Options for Legislative Consideration  
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#### Exhibit 1

#### The Legislature Appropriated \$300 Million in Florida Forever Funds in Fiscal Year 2007-08

Land Purchasing Agency or Program	Florida Forever Funding Allocation	Florida Forever Funding Amount (in millions)
Department of Environmental Protection	35.0%	\$105.0
Water Management Districts	35.0%	105.0
Florida Communities Trust (Department of Community Affairs)	22.0%	66.0
Recreation Development Assistance (Department of Environmental Protection)	2.0%	6.0
Recreation and Parks (Department of Environmental Protection)	1.5%	4.5
Forestry Program (Department of Agriculture and Consumer Services)	1.5%	4.5
Wildlife Management Program (Fish and Wildlife Conservation Commission)	1.5%	4.5
Greenways and Trails (Department of Environmental Protection)	1.5%	4.5
TOTAL	100.0%	\$300,000,000

Source: Section 259.105, *Florida Statutes*, and Florida Department of Environmental Protection.

In addition, the Legislature makes available funds annually to the department for payment in lieu of taxes to qualifying counties and local governments for all actual tax losses incurred because of Florida Forever acquisitions; in Fiscal Year 2007-08, the Legislature appropriated \$1.36 million for this purpose.

#### Resources

The Legislature appropriated \$1 billion in trust funds and general revenue and 177.5 positions for the Division of State Lands for Fiscal Year 2007-08 (see Exhibit 2). The division's general revenue appropriation (\$100,000,000) was

restoration and the Henderson Creek/Belle Meade projects.

#### Exhibit 2

#### The Legislature Appropriated Over \$1 Billion to the

Program	General Revenue	Trust Funds	Total	FTE
Division of State Lands for Fiscal Year 2007-08				

for land acquisition and the design and construction of restoration projects, including the Everglades

Land					
Administration	\$100,000,000	\$892,229,657	\$992,299,657	45	
Land					
Management	0	64,032,975	64,032,975	103	
Invasive Plant					
Control	0	44,244,047	44,244,047	29.5	
<b>Total Funds</b>	<b>\$100,000,000</b>	<b>\$1,000,556,679</b>	<b>\$1,100,556,679</b>	<b>177.5</b>	

Source: 2007 General Appropriations Act.

### **Performance**

The Division of State Lands' legislative outcome measures demonstrate mixed results, with some programs not achieving established performance standards. Additionally, prior audits and evaluations of the division's activities have identified concerns with various aspects of its programs, especially in the area of land acquisition.

The division achieved established standards for four of its seven legislatively mandated performance measures in Fiscal Year 2006-07 (measures achieving established standards are highlighted in Exhibit 3). For example, the division was successful in purchasing lands below approved levels, with purchase prices at 80% of approved values for parcels. In addition, the division's Land Management program exceeded timeliness standards for completing most requests and applications for leases, easements, and land use agreements. 3 Moreover, the division met its legislative standard for controlling invasive aquatic plants.

The division did not meet timeliness standards for completion of uplands instrument requests/applications. According to the division, deadlines are not met by external customers in returning executed documents, which negatively affects overall timeliness..

Department of Environmental Protection, Division of State Lands

Options for Legislative Consideration

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**Exhibit 3****The Division of State Lands Met Standards for Four of Seven Performance Measures in Fiscal Year 2006-07**

Cabinet for approval. The *Governor* and Cabinet may remove projects from the list but cannot otherwise change the list.

	Standard	Actual Performance
<b>Land Administration</b>		
Percent of parcels closed within agreed upon timeframe	75%	68%
Purchase price as a percent of approved value for parcels	92%	80%
Annual percent increase in acreage of land (or interests therein) on the Florida Forever List	<u>6%</u>	<u>-.25%</u>
<b>Land Management</b>		
Percent of uplands instrument requests/applications completed within 12 months as compared to those received timely	<u>95%</u>	<u>66%</u>
Percent of submerged lands lease instruments completed within 12 months as compared to those received	95%	116%
Percent of asset management instrument requests/applications completed within 12 months as compared to those received timely	100%	115%
<b>Invasive Plant Control</b>		
Percent of Florida's public water bodies in which invasive aquatic plants are under maintenance control	97%	98%

Source: Florida Department of Environmental Protection.

However, the division's Land Administration program did not meet its goal to increase the amount of acreage on the Florida Forever list, which includes land acquisition projects organized into groups. 4 Under the current performance goals, the department strives to "grow the list by 6% each year in order to assure that a sufficient amount of land is available for acquisition." The department stated that it did not achieve this goal because the standard was based on the number of acres included in the

4 The Florida Forever list includes land acquisition projects that have been nominated for inclusion by federal, state, and local government agencies, conservation organizations, or private citizens. The Acquisition and Restoration Council evaluates and selects projects from these nominees and groups them into three lists—full fee projects, less-than-fee projects, and small parcels projects. After projects are approved and grouped, the overall Florida Forever list is submitted to the Governor and

original 2001 Florida Forever list, which has not been adjusted as the list has changed over time. According to the department, "The trend in actual acreage placed on the list slowed during the life of the program." The program also did not meet the standard for closing parcels within agreed upon timeframes. The department explained this result by reporting that the program had opportunities to purchase key parcels for large dollar amounts and placed the purchase of smaller parcels on hold.

External and internal reviews of the Division of State Lands have highlighted concerns regarding the division's performance, particularly with regard to its land acquisition activities. For example, a prior OPPAGA report concluded that while land acquisitions had achieved positive results, it was difficult to conclude that the state bought the best lands possible because the division lacked an integrated process for identifying the best land to purchase. 5

In addition, several Auditor General reports have identified concerns about the division's land acquisition processes. 6 Most recently, a 2007 audit found that the department's appraisals continue to be problematic. For example, the Auditor General's review of a sample of specific acquisitions and dispositions disclosed that

documentation supporting the Babcock Ranch acquisition gave an appearance of influence of the appraisal amounts by the department in the establishment of value estimates of contracted fee appraisers;

*Justification Review." State Lands Program Florida Department of Environmental Protection, Report No. 01-07, February 2001*

*Department of Environmental Protection Acquisitions of Lands by the State January 1, 2000, Through December 31, 2001, Report No. 03-115, February 2003; Department of Environmental Protection Administration of State-Owned Lands Operational Audit, Report No. 2004 -119, February 2004; Department of Environmental Protection Acquisition, Disposition, and exchange of State Land Operational Audit, Report No. 2005 -203, June 2005; Department of Environmental Protection Land Acquisitions Operational Audit, Report No. 2008-019, September 2007.*

Department of Environmental Protection, Division of State Lands

Options for Legislative Consideration

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- inconsistencies and deficiencies in the highest and best use analyses and conclusions of appraisals for the Overstreet Ranch and Tiger Island acquisitions may have affected the value estimates for those parcels; and
- there was lack of documentation of the department's appropriate consideration of the prior sale, the value estimates in the appraisal reports, and the negotiation process of the Three Rivers acquisition.

The Department of Environmental Protection's Inspector General also has identified significant concerns about the division's land acquisition operations.<sup>7</sup> A March 2007 review of the division's Florida Forever program management found that acquisition priorities were subject to outside pressure and influences and projects were often moved forward or delayed on the acquisition list with minimal communication regarding the reasons for the changes. At the time of this review, the division reported that it could not meet its land acquisition spending commitments through the rest of Fiscal Year 2006-07 because of a lack of available funds, due largely to an over-commitment of funds resulting from aggressive acquisition activity. To address these concerns, the Inspector General made several recommendations.

The division should consistently use processes to effectively prioritize and plan an acquisition strategy based on the goals of the Florida Forever program, given funding for the remaining program years. Information regarding funding availability should be made available for prioritizing efforts, and deviations from acquisition prioritizing plans should be justified and well documented.

- In the remaining years of the Florida Forever program, the division should monitor acquisition efforts and determine the extent to which the program has met its goals. The division should factor these monitoring efforts into the planning process.
- The division should adopt written policies to ensure that the process for prioritizing and committing funds is properly documented, justified, and accounted for in department records.

To address the concerns identified in these reports, we recommend that the Department of Environmental Protection prepare a report for the 2008 Legislature detailing how it is addressing identified land acquisition problems. At a minimum, the report should address the department's appraisal process, prioritization of potential land acquisitions, monitoring activities, and the amount of additional land in acres needed to meet the Florida Forever and future goals.

### ***Options for the Legislature's Consideration***

Florida has a unique environment and continues to develop quickly. The Florida Forever program was established to help protect critical lands from development and thus avoid environmental and water quality problems and loss of species. However, buying land is expensive, removes property from local tax rolls, and results in the state incurring long-term land management costs. In lieu of purchasing land, the Legislature has authorized other conservation tools such as buying development rights, which keeps the land in private hands and on local tax rolls but can be controversial, as taxpayers cannot directly use the land for recreation and other purposes. These and other issues should be considered as the Legislature makes decisions about statewide land acquisition policies.

*Review of Florida Forever Program Funds Management and Other Issues in the Division of State Lands For the Period July 2006 through February 2007, Report No. IA-03-03-2007-54, March 2007.*

According to department officials, the Office of Inspector General is currently working on several audits, reviews, and advisory projects to address these deficiencies.

Department of Environmental Protection, Division of State Lands

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While there has been long-term public and legislative support for conservation land acquisition programs in Florida, an ongoing question has been "How much conservation land should the state buy?" There is a lack of consensus among stakeholders about the answer to this question, with some asserting that current state land holdings are adequate to meet conservation needs and others expressing the belief that the state should continue to acquire more land.

Over the past 30 years, Florida has purchased approximately 3.7 million acres of land for environmental, recreational, and preservation purposes.<sup>9</sup> A 1994 baseline estimate by the Florida Fish and Wildlife Conservation Commission asserted that approximately 11.7 million acres, or about 33% of the land area of the state, should fall into some type of conservation land use.<sup>10</sup> Currently, about 27% of the state's lands are managed for conservation,<sup>11</sup> and the Legislature has not established a statewide policy on the amount of conservation land state agencies should acquire. However, the Legislature has established goals for the state's primary acquisition program, Florida Forever, that include increasing the number of acres available for public recreation; of functional wetland systems protected; and available for sustainable forest management. While these goals allow the Legislature to track progress in the amount of land purchased, they are general in nature and do not identify the amount of acreage needed to meet these goals.

As noted above, recent audits and evaluations of the Division of State Lands have identified significant concerns about its acquisition and monitoring activities. Conservation and

research organizations that provided feedback during our review expressed similar concerns. Specifically, these stakeholders were critical of the division's project selection process, method for prioritizing land purchases, and appraisal process. In general, stakeholders expressed the opinion that the division may be acquiring land of questionable conservation value.

Given that the current state land acquisition program is nearing expiration, and significant concerns have been reported regarding the operation and monitoring of the Florida Forever program, this is an appropriate time for the Legislature to consider issues about future acquisitions. To help facilitate its decision-making, we recommend that the Legislature direct the Department of Environmental Protection to propose a comprehensive land acquisition policy that includes consideration of the type of lands and total number of acres necessary for the state to achieve conservation goals. This proposed policy would assist the Legislature in considering options for the state's acquisition program.

Exhibit 4 below identifies five policy options for the Legislature to consider. These options include continuing the Florida Forever Program but directing the department to make improvements to address identified problems (Option 1), placing the program on hiatus for one year until operational issues are resolved (Option 2), creating a new program to succeed Florida Forever (Option 3), not reauthorizing a replacement program if Florida Forever expires as anticipated (Option 4), or discontinuing the current program (Option 5). The exhibit outlines the policy options and describes the considerations, costs, and advantages and disadvantages associated with each option.

<sup>9</sup> August 2007 Report of the Florida Forever Program, Department of Environmental Protection.

<sup>10</sup> Closing the Gaps in Florida's Wildlife Habitat Conservation System, Florida Game and Fresh Water Fish Commission, 1994. *Protecting Wild Florida: Preserving the Best and Last Wilderness of Florida, Forever, The Nature Conservancy*, 2006.

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## Exhibit 4

### The Legislature Could Consider Several Options to Modify the Division of State Lands Acquisition Program

#### Option 1 - Continue the Florida Forever Program

Continue the program at the current rate of funding (\$300 million per year),

- Facilitates the continued acquisition of conservation lands.

- May result in long-term savings

as current property acquisitions may avoid need to pay a higher price for lands in future years.

Requires significant expenditure of state funds during period of budget shortfalls.

If the Division of State Lands does not resolve identified problems in acquisition processes, land

- purchases may not be of highest conservation quality?

Total debt accumulation of approximately \$900 million for the remaining years of the program, with an additional interest expense of approximately \$666 million.<sup>1</sup> Estimated management costs for land acquired each year will be approximately \$4.5 million annually? Varying annual expenditures for payments-in-lieu of taxes made to local governments when newly acquired lands are taken off the tax roll.

#### Option 2 - One Year Florida Forever Program Moratorium

- Eliminates state acquisition-related expenditures for one year.

- Allows Division of State Lands time to make improvements and address the identified problems in acquisition processes, including developing a process to effectively prioritize, plan, and monitor an acquisition strategy based on the goals of the Florida Forever program.

Discontinue acquisition of new conservation lands for one year to allow division to correct identified problems in purchase practices.

- According to the department, may expose the state to liability for failing to perform on current acquisition contracts that extend into future funding cycles.

- Reduction of funds for land acquisition would affect multiple state and local government entities that currently receive Florida Forever funds.

- New conservation lands would not be acquired during the moratorium.
- Some conservation lands may not be available for purchase after moratorium is lifted.

- Price of land may increase

during moratorium.

- May result in negative environmental impacts (e.g., loss of threatened and endangered species; diminished water quality; growth of exotic, invasive species) during moratorium.

- Avoids for one year debt accumulation of approximately \$300 million and related interest expense for these

bonds.

- Avoids for one year approximately \$4.5 million in management costs for newly acquired lands.
- Avoids for one year increased

payments-in-lieu of taxes made to local governments when newly acquired lands are taken off tax roll.

### Option 3 - Create New Program to Succeed Florida Forever

When Florida Forever reaches its • Facilitates the continued

anticipated expiration date in 2010, replace it with a new acquisition program.

Potential models include

- Division of State Lands as central agency;
- separate centralized land purchasing entity;
- public-private partnership; and
- privatization.

acquisition of conservation land.

- Previously unavailable land may be acquired.

• May result in long-term savings because continuing property acquisitions may avoid need to pay a higher price for lands in future years.

- Allows policymakers to resolve identified problems in state acquisition processes and structure the program according to legislative goals.

- Requires significant expenditure of state funds.

If a new acquisition model (e.g., public-private partnership, privatization) is adopted, start-up time and costs may be significant.

- Results in the accumulation of new debt.

- Increases management costs for newly acquired land.
- Varying annual expenditures for payments-in-lieu of taxes made to local governments when newly acquired lands are taken off the tax roll.



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Option	Advantages	Disadvantages	Potential Cost Implications
<p><b>Option 4 - Do Not Replace Florida Forever Program Upon Expiration</b></p> <p>If the Florida Forever program expires in 2010, do not authorize a replacement program.</p>	<ul style="list-style-type: none"> <li>• Reduces long-term state debt obligation and acquisition-related expenditures.</li> <li>• Would enable agency staff to concentrate on the management of previously acquired lands.</li> <li>• Staff of Division of State Lands could be reduced.</li> </ul>	<p>New conservation lands would not be acquired. Reduction of funds for land acquisition would affect multiple state and local government entities that currently receive Florida Forever funds. May result in negative environmental impacts (e.g., loss of threatened and endangered species; diminished water quality; growth of exotic, invasive species).</p>	<ul style="list-style-type: none"> <li>• Avoids accumulation of additional debt related to land acquisition.</li> <li>• Eliminates management costs for newly acquired lands.</li> <li>• Eliminates payments-in-lieu of taxes made to local governments when newly acquired lands are taken off the tax roll.</li> <li>• Department officials estimate that 7 FTEs with acquisition-related responsibilities could be eliminated. In addition, the department reports that the number of acquisition-related service contracts would be reduced, avoiding the expenditure of approximately \$5.6 million annually.</li> </ul>
<p><b>Option 5 - Discontinue Florida Forever Program</b></p> <p>Discontinue acquisition of new conservation lands starting in Fiscal Year 2008-09.</p>	<ul style="list-style-type: none"> <li>• Reduces long-term state debt obligation and acquisition-related expenditures.</li> <li>• Would enable agency staff to concentrate on the management of previously acquired lands.</li> <li>• Staff of Division of State Lands could be reduced.</li> </ul>	<p>According to the department, may expose the state to liability of failing to perform on current acquisition contracts that extend into future funding cycles. Reduction of funds for land acquisition would affect multiple state and local government entities that currently receive Florida Forever funds. New conservation lands would not be acquired. May result in negative environmental impacts (e.g., loss of threatened and endangered species; diminished water quality; growth of exotic, invasive species).</p>	<p>species).</p>

- Avoids total debt accumulation of approximately \$900 million, with an additional interest expense of approximately \$666 million.
- Eliminates management costs for newly acquired lands.
- Eliminates payments-in-lieu of taxes made to local governments when newly acquired lands are taken off the tax roll.
- Department officials estimate that 7 FTEs with acquisition-related responsibilities could be eliminated. In addition, the department reports that the number of acquisition-related service contracts would be reduced, avoiding the expenditure of approximately \$5.6 million annually.



1 Interest debt estimate is \$226.1 million at 6% for a 20-year bond.

2 According to department officials, the division has developed, implemented, and continues to improve a work plan development process that focuses on natural and historical resources as the primary foundation for decisions on which parcels of land should be acquired. In addition, the department reports that the Acquisition and Restoration Council is also re-evaluating its processes for ranking projects and guiding the division in what are the most important Florida Forever projects.

~ Estimate does not include all land management expenses, as agencies also receive land management funding from other sources, such as agency trust funds.

Source: OPPAGA analysis.

## The Florida Legislature

### OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY

Gary R. VanLandingham, Ph.D., Director



### MEMORANDUM

November 16, 2007

TO:

Senator Don Gaetz, Co-Chair Joint Legislative Sunset  
Committee

CC:

Representative Kevin Ambler, Co-Chair Joint Legislative Sunset Committee

FROM:

Rick Mahler, Staff Director Joint Legislative Sunset Committee  
Jaime DeLoach, Staff Director Senate Committee on General Government Appropriations  
Wayne Kiger, Staff Director Senate Committee on Environmental Preservation and Conservation  
Tom Hamby, Council Director House Environmental and Natural Resources Council

RE:

**Department of Environmental Protection, Recreational Programs, Options for Legislative  
Consideration**

As provided by The Florida Government Accountability Act, the Legislature directed OPPAGA to examine the Department of Environmental Protection (DEP). 1 This memo is part of a series that reviews the department's operations, and focuses on the agency's recreational programs and their purpose, organization, responsibilities, resources, and performance. The memo also offers options for legislative consideration.

OPPAGA developed seven policy options for the Legislature to consider regarding DEP's recreational activities. These options include continuing to purchase new recreational properties using annual Florida Forever Program funds (Option 1); discontinuing acquisition of new recreational properties for one year (Option 2); permanently discontinuing acquisition of new recreational properties (Option 3); limiting initial development at new recreational properties to basic "starter kits" (Option 4); aggressively seeking to maximize revenue at recreational properties by increasing admission and activity fees and expanding revenue producing services (Option 5); closing some recreational properties that have low visitation, are costly to maintain, and/or have low recreation, cultural, or environmental value (Option 6); and establishing a foundation board to raise private philanthropic funds for state parks and other recreational properties (Option 7). For each option, we describe the advantages and disadvantages.

Sections 11.901-11.920,

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### **Purpose, Organization~ and Responsibilities**

The purpose of the Department of Environmental Protection's recreational programs is to anticipate and meet the outdoor recreation needs of the state's residents and visitors, to ensure that an adequate natural resource base is maintained to accommodate future demands and preserve a quality environment, and to preserve, enhance, and restore the natural functions of marine and estuarine environments.

The agency's three major recreational programs are State Park Operations, the Office of Greenways and Trails, and the Office of Coastal and Aquatic Managed Areas.

**State Park Operations** manages 161 state parks encompassing 698,648 acres (see Appendix A for a statewide map of the park system). Staff performs various activities, including managing areas and facilities for outdoor recreation activities such as camping, swimming, picnicking, and hiking. Staff also provides historical interpretation by restoring historic features, offering living history programs and tours, and displaying printed materials at state parks.

Office of **Greenways and Trails** works with local governments, developers, private landowners and state and federal agencies to help establish the statewide system of greenways and trails. Currently, 769,603 acres are designated as part of the state's greenways and trails system. The office also administers the Florida Greenways and Trails Designation Program, which formally defines the statewide system by designating trails on public and private lands. In addition, the office manages several state trails throughout Florida and the Marjorie Harris Carr Cross Florida Greenway, a 110-mile long conservation and recreation corridor spanning Putnam, Marion, Citrus and Levy counties in north central Florida.

### **Office of Coastal and Aquatic Managed Areas**

provides resource management for state owned submerged lands and coastal uplands. This activity includes restoring degraded resources through prescribed fires, invasive plant control habitat restoration, restoring watershed function, and providing technical assistance for the planning and permitting process. The office manages the Florida Aquatic Preserves, the State Buffer Preserves, the national Estuarine Research Reserves, and the Florida Keys National Marine Sanctuary. The office manages 57 sites totaling over five million acres of state submerged lands and coastal uplands that serve as native habitat for wildlife. Buffer preserves also provide opportunities for outdoor recreation activities such as hiking, horseback riding, bicycling, and wildlife observation.

Moreover, through the Florida Forever Program, the state's land acquisition initiative, the state park system receives \$4.5 million per year to purchase in-holdings and additions and the Office of Greenways and Trails receives \$4.5 million annually for trail development. In addition to these land acquisitions, DEP's recreational programs may also receive additional land for parks, trails, and coastal areas through Florida Forever acquisitions facilitated by the Acquisition and Restoration Council. 2 Staff also coordinates with the Division of State Lands to represent the agency's interests in negotiations and to ensure the timely matching of available money with negotiated projects. Once properties are under program management jurisdiction, planning staff assumes land administration responsibility.

The Acquisition and Restoration Council has sole responsibility for evaluating, selecting, and ranking **state land acquisition** projects for **the** Florida Forever program. The council annually reviews all Florida Forever acquisition proposals, decides which proposals should receive further evaluation, **determines the** final project boundaries, and groups Florida Forever projects.

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## Resources

The Legislature appropriated \$188.3 million in trust funds and general revenue and 1,202.5 positions to the agency's recreational programs for Fiscal Year 2007-08 (see Exhibit 1). 3 Nearly 80% of this funding (\$149.8 million) was for State Park Operations, including fixed capital outlay costs.

Most funding is from trust funds, including the Land Acquisition Trust Fund, Conservation and Recreation Lands (CARL) Trust Fund, the Grants and Donations Trust Fund and State Park Trust Fund. Funds from documentary stamps affixed to deeds in transfers of real property support the Land Acquisition Trust Fund; in this way, Floridians and part-time residents who buy land or houses pay for the acquisition and development of state park land, as well as subsidize park operating costs. Funds deposited in the State Park Trust Fund are generated from state park user fees, such as entrance fees, rental fees, and concession sales.

## Exhibit 1

### The Legislature Appropriated \$188.3 Million to DEP Recreational Programs for Fiscal Year 2007-08

#### State Park

Operations	\$0	\$149,790,323	\$149,790,323	1,054.5
Office of Greenways and Trails	\$0	\$19,197,752	\$19,197,752	46.0
Office of Coastal and Aquatic Managed Areas	<u>\$3,280,040</u>	<u>\$15,999,010</u>	<u>\$19,279,050</u>	<u>102.0</u>
Total Funds	<u>\$3,280,040</u>	<u>\$184,987,085</u>	<u>\$188,267,125</u>	<u>1,202.5</u>

Source: 2007 General Appropriations Acts.

## Performance

volunteering, educating visitors, hosting events and raising funds for specific park projects.

The park system is also supported by 6,000 volunteers that assist with park management activities. In addition, there are currently more than 80 Citizen Support Organizations supporting state parks throughout the state by

Legislative outcome measures demonstrate that the Department of Environmental Protection's recreational programs did not meet performance standards for most measures. Additionally, ongoing issues related to state park funding sufficiency and identification of new ways to produce revenue have affected the park system.

DEP's recreational programs collectively achieved established standards for two of eight legislatively

mandated outcome measures in	Fiscal Year
2006-07 (measures achieving	established
standards are highlighted in	Exhibit 2).

Specifically, state parks under the department's management experienced a significant increase in visitors, with 19.5 million people in Fiscal Year 2006-07. This represented a 7.3% increase in visitors from the prior year, exceeding the approved standard of a 1.3% increase in visitation. The Office of Coastal and Aquatic Managed Areas greatly exceeded its standard for enhancing or restoring degraded areas in the National Estuarine Research Reserves. The percentage change in the number of areas improved was 250%, compared to the standard of a 1% increase.

However, the recreational programs did not meet standards for six of eight outcome measures. For example, state park acreage declined by 3.8% in Fiscal Year 2006-07 compared to the performance goal of a 1% increase; the department attributed this decline to the transfer of the 32,327-acre Tosahatchee State Park to the Florida Fish and Wildlife Conservation Commission. Moreover, while the number of visitors to state parks increased significantly, visitors at coastal and aquatic areas declined by nearly 1%. According to the department, the decrease was due to the Apalachicola visitor center being closed for hurricane-related repairs.

In addition, the program areas experienced difficulty in restoring and maintaining state parks and in controlling invasive species on greenways and trails and in coastal and aquatic areas. The



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number of state park acres restored or maintained in their native state fell by 17% during the fiscal year, in contrast to the performance standard of a 2% increase. The percentage of managed acres with controlled invasive or undesirable species was 25%, significantly below the approved standard of 35%. Similarly, the amount of managed lands infested by invasive plants grew by 17%, compared to the standard of only a 1% increase.

invasive plant infestations, and lack of staff. For example, efforts to restore

## Exhibit 2

### In Fiscal Year 2006'07, DEP's Recreational Programs Did Not Meet Standards for Most Performance Measures

	Fiscal Year 2006-07	
	Actual Performance	Standard

Percentage change in state park acres from the prior fiscal year	-3.8%	1.0%
Percentage change <b>in the number of</b> state parks acres restored or maintained in native <b>state from the prior</b> fiscal year	-17.0%	2.0%

office of Greenways and Trails:: : ==: ..... :

Percentage of managed acres with invasive or undesirable species controlled	25.0%.....	35.0%
Percentage change in the number of acres designated as part of the statewide system of greenways and trails from those so designated in the previous year	0.2%.....	1.5%
Office of Coastal and Aquatic Managed Areas		

Percentage change of managed lands

infested by invasive plants	17%	1%
Percentage increase in number of visitors	-0.74%	3%

The program areas also reported that they did not achieve legislative standards for these measures for a variety of reasons, including natural disasters, unexpected

and maintain parks in their native state were hampered by statewide droughts and wildfires that precluded the normal level of prescribed burning: The department also reported a substantial increase in a particular exotic plant in one coastal/aquatic area that had not previously proved problematic and its ability to respond to this infestation was constrained by available funding.

An ongoing issue has been state park funding sufficiency and identifying ways to produce more self-generated income and expand revenue sources. Prior evaluations have recommended options for addressing this concern, including delaying new park development, establishing formal guidelines for determining priority projects, increasing state park fees, expanding overnight accommodations at state parks, and increasing the use of honor boxes to collect park entrance fees.\*

Admission fees to state parks were raised in 2004 and provide about half of the state park operating budget, with various trust funds covering the remaining amount. The department also increased the number of cabins available for rental in parks, although this remains substantially lower than in other states such as Georgia. As state park attendance increases and its infrastructure ages, it has experienced a growing capital improvements backlog such as park refurbishments, facility repairs, and renovations to achieve ADA compliance. For Fiscal Year 2007-08, the department estimates that the state park system has \$283.3 million in capital improvement needs, while \$20 million in funds were available for fixed capital outlay projects.

To explore options for addressing these concerns, in 2006 DEP hired a consulting firm to assess the potential for creating a statewide foundation to

<sup>4</sup> See previous OPPAGA reports: *Justification Review: Recreation and Parks Program*, Department of Environmental Protection, Report No. 00-28, December 2000; and *Progress Report: Recreation and Parks Program Implements Few Cost Saving and Revenue Recommendations*, Report No. 02-41, July 2002.

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conduct fundraising for state parks, s The study identified several positive factors about the state park system, including that 85% of study participants had a positive image of Florida's parks. However, the review also identified numerous challenges, including the perceptions of participants that

- most state residents and visitors are largely unaware of parks other than those located in their home communities;
- only those who cannot afford other recreational opportunities utilize the state parks to any considerable extent; and
- receipt of significant private philanthropic dollars could result in reduced state funding.

The study recommended the creation of an independent volunteer foundation board to raise funds to supplement its annual legislative appropriation. The foundation board, in consultation with department staff, would make decisions about how these supplemental funds are managed, expended, and invested. The department has not yet decided to support the creation of a foundation, but continues to seek feedback from the public regarding this option.

**Options for Legislative Consideration**

Florida's park system is one of the largest in the country, with 161 parks encompassing nearly 700,000 acres. In Fiscal Year 2006-07, the state's parks received 19.5 million visitors, with the Department of Environmental Protection estimating the economic impact of these visits at nearly \$900 million. During the same period, an estimated additional 3 million visitors used the Florida Trail System, and 436,944 visited the state's coastal and aquatic managed areas. Funding for the state's park system and its operations makes up nearly 80% of the annual legislative appropriation for the state's recreational programs.

While the state's park system is well regarded nationally, it is facing a growing capital improvement backlog, and purchasing new recreational property, managing ongoing park operations, and keeping up with visitor increases is increasingly expensive. Relatively few parks are self-supporting, and some have low visitation and revenues. These funding concerns have been an ongoing issue and should be considered as the Legislature makes derisions about statewide land acquisition, management, and recreational use polities.

Exhibit 4 below identifies seven policy options for the Legislature to consider in managing these costs. These options include continuing to purchase new recreational properties using annual Florida Forever Program funds (Option 1); discontinuing acquisition of new recreational properties for one year (Option 2); permanently discontinuing acquisition of new recreational properties (Option 3); limiting initial development at new recreational properties to basic "starter kits" (Option 4); aggressively seeking to maximize revenue at recreational properties by increasing admission and activity fees and expanding revenue producing services (Option 5); closing some recreational properties that have low visitation, are costly to maintain, and/or have low recreation, cultural, or environmental value (Option 6); and establishing a foundation board to raise private philanthropic funds for state parks and other recreational properties (Option 7). The exhibit outlines the policy options and describes the advantages and disadvantages associated with each option.

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## Exhibit 4

Option	Advantages	Disadvantages
<b>The Legislature Could Consider Seven Options to Modify the State Recreational System</b>		
<b>Option 1 Continue to Acquire New Recreational Properties</b>		
Continue to purchase new recreational properties using annual Florida Forever Program funds (\$9 million plus other land acquisitions from Acquisition and Restoration Council efforts).	<ul style="list-style-type: none"> <li>Facilitates the continued acquisition of new recreational properties, which helps to ensure growth in recreational opportunities for Florida's citizens and visitors and</li> <li>preservation, interpretation, and restoration of the state's natural and cultural resources.</li> <li>May result in long-term savings because purchasing land now may avoid paying a higher price for land in the future.</li> <li>Based on department estimates, may result in significant economic impact (e.g., the department estimated that Fiscal Year 2006-07 state park visitation resulted in a \$900 million economic impact).</li> </ul>	<ul style="list-style-type: none"> <li>Requires expenditure of state funds, including                             <ul style="list-style-type: none"> <li>acquisition expenses and related debt obligation;</li> <li>park development expenses; and</li> <li>long-term management costs.</li> </ul> </li> <li>May experience opposition from private recreational enterprises, which may perceive new recreational properties as competition.</li> </ul>
<b>Option 2 - Delay Acquisition of New Recreational Properties</b>		
Discontinue acquisition of new recreational properties for one year.	<ul style="list-style-type: none"> <li>Eliminates state debt obligation, acquisition-related expenses, and management costs for one year.</li> <li>Allows time to make improvements, including                             <ul style="list-style-type: none"> <li>establishing formal guidelines for determining priority recreational property development projects;</li> <li>using funds to address capital project backlog in lieu of land acquisition; and</li> <li>developing a strategic marketing plan to help improve underperforming recreational properties.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>New recreational properties would not be acquired for one-year.</li> <li>Some currently available land may not be subsequently available for purchase or price may increase after hiatus.</li> <li>May negatively affect the state's preservation, interpretation, and restoration of natural and cultural resources.</li> <li>Based on department estimates, may result in reduction in overall economic impact of the state recreational system.</li> </ul>
<b>Option 3 - Discontinue Acquisition of New Recreational Properties</b>		
Discontinue acquisition of new recreational properties.	<ul style="list-style-type: none"> <li>Reduces long-term state debt obligation, acquisition-related expenses, and management costs.</li> <li>Would enable agency staff to concentrate on the operation and management of existing recreational properties and to address capital project backlog.</li> </ul>	<ul style="list-style-type: none"> <li>New recreational properties would not be acquired.</li> <li>Department staff that performs land acquisition tasks could be reduced or redirected.</li> </ul>

which would limit future recreational areas available to citizens and visitors.

May negatively affect the state's preservation, interpretation, and restoration of natural and cultural

resources.

Based on department estimates, may result in reduction in overall economic impact of the state recreational system.

**Option 4 - Limit Development of New Recreational Properties**

- Helps control development costs, as starter kits are relatively inexpensive (\$50,000).
- Would allow new recreational properties to remain in its natural state while being accessible to the public.
- Allows time to determine if the level of new recreational property usage is sufficient to warrant construction of more permanent facilities.
- High visitation would indicate the need for additional infrastructure, such as visitor centers.
- Low visitation would indicate that no further development is warranted at this time.

Limit initial development at new recreational properties to basic "starter kits," which include a paved road, a large picnic shelter, and a temporary restroom.

- Lack of services beyond the starter kits may negatively affect attendance at new recreational properties, especially in high population or tourism areas.
- Lower attendance due to lack of services would diminish overall revenues.

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Option	Advantages	Disadvantages
<b>Option 5 - Aggressively Seek to Maximize Revenue at Recreational Properties by Increasing Admission and Activity Fees <u>and Expanding Revenue Producing Services</u></b>		
Take steps to make the state recreational system more self-supporting by increasing entrance fees and expanding revenue producing services such as camping, cabins, and private concessions. Install honor boxes in locations throughout the statewide trail system and at parks that currently do not have admission fees.	<ul style="list-style-type: none"><li>• Would increase recreational properties' self-generated revenue, which would help move them toward self-sufficiency and provide more funds for management and capital improvements.</li><li>• If admission fees were increased at most popular recreational properties, visitors may be diverted to other less popular areas, which would help prevent overuse and damage to areas with high levels of visitation and increase the use of parks that have been historically underused.</li><li>• Would not require a statutory change, as current law allows recreational properties to charge fees but does not specify fee amounts. Therefore, it is within the department's current authority to set fees.</li></ul>	<ul style="list-style-type: none"><li>• Higher fees may reduce overall visitation, particularly among lower-income persons that studies have identified as a primary user of park recreation services. Lower attendance could diminish overall revenues.</li><li>• Additional commercial development of recreational properties for camping, cabins, and services could alter preservation of some recreational properties.</li><li>• May experience opposition from private recreational enterprises, which may perceive new recreational properties as competition.</li></ul>

### Option 6 -Close Some Recreational Properties .....

Close recreational properties that have low visitation, are costly to maintain, and/or have relatively low cultural, historical, or environmental value. Affected properties could be

- transferred to another state agency or local government or
- sold to a private entity,
- 

- There is a precedent for transferring recreational properties to other agencies. For example, in 2006, DEP transferred the Tosahatchee State Park to the Fish and Wildlife Conservation Commission; the commission expanded the services available at the park, offering hunting from September to March each year.
- Reduces need for state funding for recreational property operation, maintenance, and improvement, Would allow department to concentrate its efforts on those recreational properties with the greatest visitation, revenue production, and/or cultural, historical, recreational, and environmental significance.
- If recreational properties were sold to a private entity, land would likely be placed back on local property tax rolls.
- Funds from sale of recreational properties could be used to address capital project backlog.
- Staff at affected recreational properties could be eliminated or redirected.

- Would negatively affect the state's preservation, interpretation, and restoration of natural and cultural resources.
- Based on department estimates, may result in reduction in overall economic impact of state recreational system.
- Prior to sale or transfer, would require determination of compliance with Florida Forever bond covenants.

### Option 7 - Create an Independent Volunteer Foundation Board to Raise Funds for Parks and Other Recreational Properties

Establish a foundation board to raise private philanthropic funds for state parks and other recreational properties,

- Would generate funds that could be used to supplement or reduce annual legislative appropriation,
- May provide additional state-level guidance and coordination for existing citizen support organizations that currently raise funds.

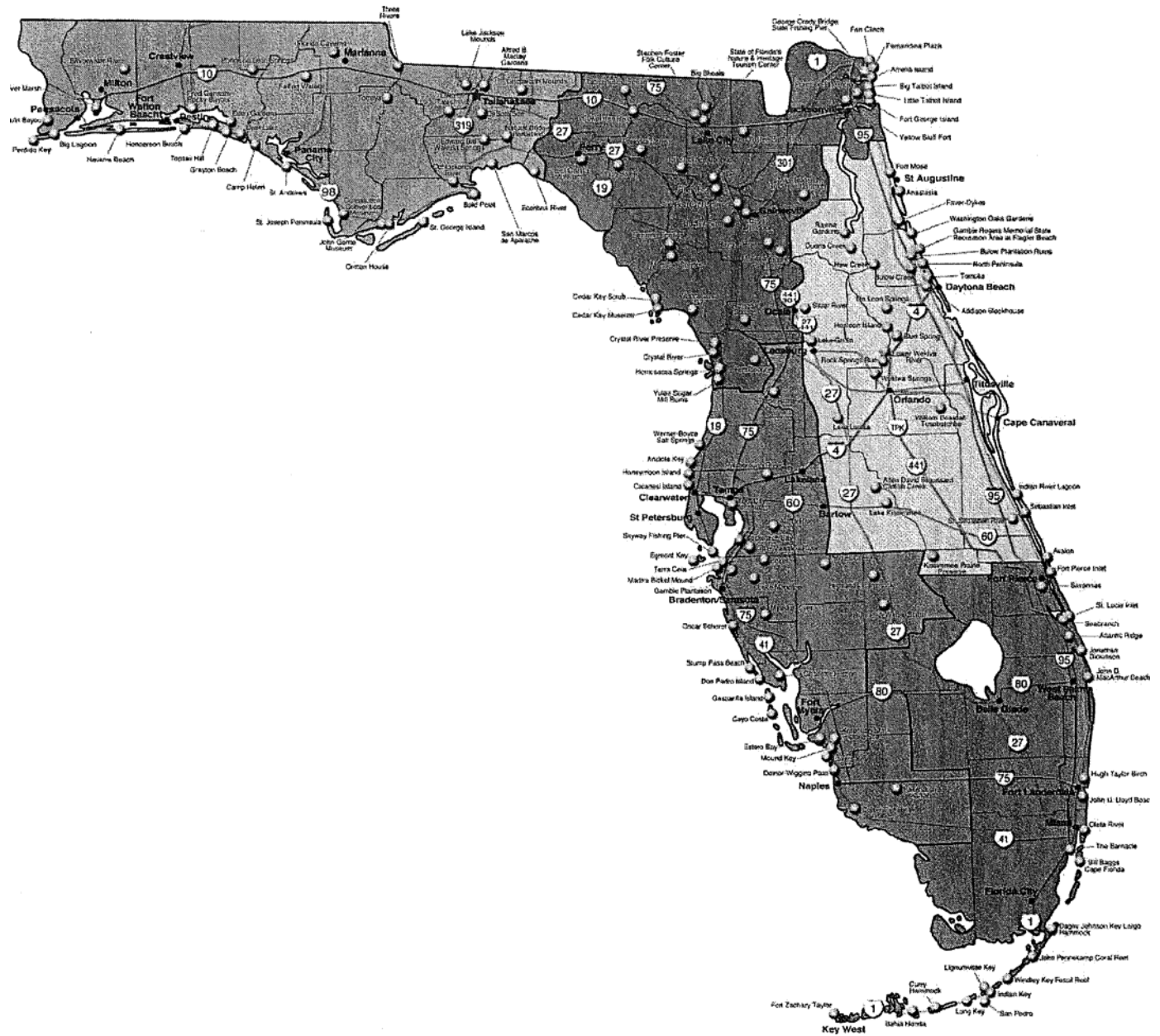
- Fund levels not guaranteed and would likely fluctuate from year to year.
- Would require creating a system to ensure accountability over funds collected.

Source: OPPAGA analysis.

Department of Environmental Protection, Recreational Programs,  
Options for Legislative Consideration  
November 16, 2007  
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***Appendix A***  
***The Department of Environmental***  
***Protection Manages 161 Parks Around the State***





Appendix G



**Efficiency and Revenue Analysis**  
**Regulatory Programs under Chapter 373 and Chapter 403, Part VI**  
**Environmental Resource Permitting and Drinking Water**  
**January 2008**

## Efficiency and Revenue Analysis

### Environmental Resource Permitting and Drinking Water

#### Executive Summary

The 2007 Special Session C General Appropriations Act requires the Department of Environmental Protection (DEP) to evaluate the efficiency, revenues and expenditures of its Environmental Resource Permitting (ERP) and Drinking Water regulatory programs, with a focus on fee revenues. Specifically, line item 435 of the Act states:

*The Department of Environmental Protection is directed to provide a report on the regulatory programs under chapter 373 and part 6 of chapter 403, Florida Statutes. The report shall, at a minimum, evaluate the department's operations for efficiencies and provide a detailed comparative analysis of the revenues and expenditures to determine the sufficiency of each regulatory program for which a fee schedule exists. The report and its recommendations shall be provided to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 1, 2008.*

The report that follows summarizes the scope and statutory responsibilities of the Drinking Water and ERP programs; outlines the range of regulatory activities, those conducted in the field and the other overarching legal, administrative, technical assistance, and data development and management duties; and identifies a representative sampling of efficiency measures being implemented to streamline the regulatory process for permit applicants and permit holders and to keep program costs to the state to a minimum. It then considers several changes to permit application fees that could address the need to reduce reliance on General Revenues (GR). The specific costs and revenue sources for each program in DEP are as follows:

#### DEP Environmental Resource Permitting Program Budget and Revenues

General Revenue	% of Total	Permit Fee TF	% of Total	Grants & Donation TF	% of Total	Other TF	% of Total	Total
\$7,119,200	41.0%	\$605,078	3.5%	\$347,162	2.0%	\$9,309,610	53.6%	\$17,381,051

The ERP program, generally, regulates activities in uplands, wetlands and other surface waters to assure that their individual and cumulative impacts do not promote flooding or degrade water quality or habitat for aquatic or wetland dependent wildlife. Florida's five water management districts implement separate aspects of the ERP program under operating agreements with DEP that explicitly divide responsibilities so there is no overlap or duplication. The water management districts are constitutionally and statutorily authorized taxing districts with entirely separate revenues, and are not considered in this report.

#### DEP Drinking Water Program Budget and Revenues

General Revenue	% of Total	Permit Fee TF	% of Total	Grants & Donation TF	% of Total	Other TF	% of Total	Total
\$1,361,092	21.0%	\$1,115,536	17.2%	\$2,050,189	31.6%	\$1,965,536	30.3%	\$6,492,353

The Drinking Water program regulates about 5,900 “public water systems” to ensure that drinking water treatment and distribution systems are properly designed, operated and maintained to provide safe drinking water to Florida residents and visitors. The program is implemented under Florida law as a delegated (primacy) program of the federal government, specifically the United States Environmental Protection Agency. The DEP program also has a cooperative relationship with the Department of Health and the local county health units that implement the program in nine large counties pursuant to interagency agreement. (These nine county health units will be referred to as “approved” or “delegated” throughout the report.) By law, DEP has the “lead-agency role of primary responsibility” for the program, with the Department of Health and county health units having a supportive role. (The Department of Health has independent responsibilities as Florida’s public health agency.) DEP underwrites some of the health programs’ costs, while other revenues come from state and local permit fees, state and local GR, and lab assessments. The local county health units keep the bulk of the state permit fee revenues in these counties, the implications of which are discussed in the report.

The ERP and Drinking Water programs must fulfill expansive environmental and public health obligations under chapters 373 and 403, Florida Statutes, respectively. Each year, they collectively act on 15,000 – 20,000 permit and other authorization applications, evaluate extensive monitoring data and conduct more than 8,000 inspections and 3,500 technical assistance contacts throughout Florida. They oversee the continuing compliance of more than 5,900 stationary drinking water systems and a growing universe of perhaps 10,000 new sites and activities each year subject to the requirements of the ERP program. Florida has more than 18 million residents and more than 80 million annual visitors. DEP conducts the two programs addressed in this report with fewer than 270 full-time staff on a collective budget of less than \$24 million—one staff person for every 68,500 Floridians at an average cost of \$1.31 per citizen, most of which already is subsidized by fees on regulated entities, taxes on polluters, and federal government grants. Neither program has had a net increase in career service staff for more than 10 years.

For each program, the analysis characterizes the universe of regulated sites, facilities and activities; the basic authorizations and permits required by statute and rule; and the statutory fee authorities that govern DEP’s assessments. Based on the proviso language, the report focuses on the relationship between fee revenues and GR in funding the two programs and evaluates the ability of DEP to generate additional fee revenues to replace some or all of the GR.

In Drinking Water, fees currently cover about 17% of program costs while GR supports about 21%. Thus, drinking water fees would have to be somewhat more than doubled, collectively, to replace all GR. Full replacement likely could only be done through a combination of increased permit application fees and implementation of a new annual operating fee for drinking water systems. Some statutory changes would be necessary to accomplish the objective. The fee increases would affect the entire universe of drinking water systems, including the substantial majority (61%) of systems serving fewer than 100 customers. Because of the regulatory inter-relationship between DEP and the nine DEP-delegated county health units, increasing fees to replace DEP’s GR appropriation would also potentially replace about one-half the state GR distribution to the nine county health units.

In ERP, permit fee revenues represent about 11% of total program costs. (Not all ERP fee revenues are currently budgeted to the ERP program, a situation discussed further in the report.) GR supports about 41% of the program’s costs. If the objective were to replace all GR with permit

fees, ERP fee revenues collectively would have to be more than quadrupled. Analysis suggests that this is an unrealistic objective given that so much of the ERP universe comprises individual

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homeowners and small businesses with limited resources and with a longstanding expectation that fees will be kept low.

Instead, the report considers potential fee increases for a subset of the universe of ERP activities and authorization applications, those with the highest volume that currently have no fees or only minimal fees along with a number of individual permit types that require extensive review and for which increased fees seem more appropriate and revenue productive. These changes could, if implementable, allow fees to recoup about 25% of total program costs, which would restore the permit fee share of costs to the levels of a decade or more ago. These increases would reduce, but not eliminate, the need for GR to implement the ERP program.

If determined to be appropriate state policy, DEP could propose increases for some fees based on existing statutory authority and within at least some of the statutory fee caps and requirements for sliding scales to account for differences in the universe of permit applicants. Other fee increases would require statutory changes, such as the authority to require fees for statutory exemptions; increases to the fee caps for certain permits; specific authority for annual operating fees for drinking water systems; and elimination or adjustment of existing fee waiver and reduction provisions. Given the longstanding expectation that agency fees should be minimized, consideration also would have to be given to adopting explicit statutory direction to DEP to increase fees to achieve specific objectives along with more explicit, consistent statutory language relating to the costs fees are intended to recoup.

DEP must implement fee changes through rulemaking under chapter 120, F.S. The extent and magnitude of potential fee changes would require a long and no doubt controversial rulemaking process that could only be implemented in phases over time. Many stakeholders would have an interest in—and objections to—fee increases, and these would have to be accounted for in the rulemaking process. Because of the procedural and public participation requirements of chapter 120, F.S., non-controversial rulemaking often takes a year or more to conclude; rulemaking to increase a wide range of fees by significant amounts would take substantially longer.

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## Introduction

The 2007 Special Session C General Appropriations Act requires the Department of Environmental Protection (DEP) to evaluate the efficiency, revenues and expenditures of its Environmental Resource Permitting and Drinking Water regulatory programs, with a focus on fee revenues. Specifically, line item 435 of the Act states:

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*under chapter 373 and part 6 of chapter 403, Florida Statutes. The report shall, at a minimum, evaluate*

*the department's operations for efficiencies and provide a detailed comparative analysis of the revenues and*

*expenditures to determine the sufficiency of each regulatory program for which a fee schedule exists. The report*

*and its recommendations shall be provided to the Executive Office of the Governor, the President of the*

*Senate, and the Speaker of the House of Representatives no later than January 1, 2008.*

Environmental Resource Permitting (ERP) is the only regulatory program addressed in chapter 373 that DEP implements directly. Consumptive use permitting and water well permitting also are authorized in chapter 373, but these programs are implemented directly by Florida's five water management districts. (The water management districts also implement specific elements of the ERP program distinct from DEP's responsibilities under operating agreements adopted pursuant to s. 373.046, F.S.)

Part VI of chapter 403, the Florida Safe Drinking Water Act, governs DEP's Drinking Water program. Part VI also addresses the Water and Wastewater Operator Certification Program, which is an individual licensing program unlike any of DEP's true regulatory programs and which, pursuant

to s. 403.871, F.S., is 100% self-sufficient through fees for operator testing and licensing.

This report discusses the following topics for the ERP and Drinking Water programs:

- Background and statutory responsibilities.

- Staffing and workload demands.

- Efficiency measures.

- Costs.

- Revenue sources and budgeting.

- Fee revenue options for consideration.

## General Background and Statutory Responsibilities

### Environmental Resource Permitting (ERP) – Part IV of Chapter 373, F.S.

The ERP program regulates activities in uplands, wetlands and other surface waters to assure that their individual and cumulative impacts do not promote flooding or degrade water quality or habitat for aquatic or wetland dependent wildlife. It addresses dredging, filling, and construction in wetlands and other surface waters; stormwater and surface water management systems in uplands; and activities in open water, including docks and marinas. The program also is responsible for the linked authorization of projects or activities for construction on or use of submerged lands owned

by the State of Florida and acts as staff to the Board of Trustees (BOT) of the Internal Improvement Trust Fund (the Florida Cabinet).

Regulation comprises permitting and other forms of authorization, compliance evaluation, technical assistance to permit applicants and other interested parties, and enforcement of the requirements contained in statute, rule and individual permit conditions. Where project impacts cannot be avoided but can be mitigated through the creation or enhancement of wetlands, for example, such mitigation is required by permit. Because of the variety and complexity of Florida's ecosystems and the varying impacts of different kinds of development, the collective ERP staff must be versed in stormwater engineering, plant and soil identification, biology and chemistry, hydrogeology, and other scientific disciplines. Effective program implementation requires extensive fieldwork in order to offer technical assistance to permit applicants, make permitting decisions, evaluate the possibilities of mitigation for unacceptable impacts, and assess the consequences and ongoing compliance of activities after the fact.

Because of Florida's continuing rapid growth and development, the ERP program is responsible for regulating an ever-increasing number of sites and activities. Staff must review more than 10,000 to 15,000 permit applications each year, largely depending on the state of the economy—a better economy and more construction mean more permitting activity. All newly authorized activities become part of the expanding regulatory universe for compliance monitoring and, where necessary, enforcement.

The program is conducted out of DEP's six regulatory district offices (see the map at the end of this section) with oversight by the Division of Water Resource Management in Tallahassee. District staff implements the voluminous day-to-day permit reviews and actions, compliance inspections and enforcement activities. Tallahassee headquarters is responsible for program oversight and statewide consistency, which will be elaborated in the workload analysis below. Tallahassee ERP personnel also conduct formal wetland evaluations and delineations statewide (determinations of jurisdictional boundaries), manage the Wetland Mitigation Banking program and oversee the implementation of mangrove trimming by authorized local governments.

Tallahassee staff in the Bureau of Mining and Minerals Regulation and the Bureau of Beaches and Coastal Systems also implements ERP program requirements in the context of their overall responsibilities for mining and coastal construction activities, respectively. The activities in these programs are unique and the numbers of ERP permit applications constitutes a relative handful compared to the stand-alone ERP program. These other programs also are funded independently from the ERP program and, thus, are not the focus of this report.

ERP is implemented jointly with Florida's five water management districts under operating agreements that explicitly divide responsibilities so there is no overlap or duplication. Under these operating agreements, generally speaking, DEP is responsible for fully "wet" projects, like those related to reefs and channels; industrial development that would require other DEP permits; singlefamily

activities, including docks, that trigger specific thresholds; and any water management district project that requires an ERP permit. The water management districts, on the other hand, are responsible for new residential subdivision development above a threshold level, typically including condominiums; commercial (non-industrial) development; and any DEP project requiring an ERP permit. The water management districts have independent authority under chapter 373 to implement their elements of the program. They also are constitutionally and statutorily authorized

taxing districts with entirely different revenues from DEP and, thus, are not considered in this analysis.

See [www.dep.state.fl.us/water/wetlands/index.htm](http://www.dep.state.fl.us/water/wetlands/index.htm) for more information on the ERP program.

### **Drinking Water – Part VI of Chapter 403, F.S.**

The Drinking Water program regulates all “public water systems” in Florida pursuant to state law and under a primacy agreement (similar to a delegation) with the U.S. Environmental Protection Agency pursuant to the federal Safe Drinking Water Act. A public water system is, generally, one that provides drinking water to 25 or more people or serves 15 or more service connections at least 60 days each year. (Smaller systems fall within the jurisdiction of the Florida Department of Health.) Public water systems may be publicly or privately owned and include local government utilities, private utilities, small businesses of all sorts, trailer parks, churches, industry sites, and a wide range of other entities. There are about 5,900 public water systems in Florida; the number changes as smaller systems consolidate, others cease to operate, and new systems come online.

The fundamental purpose of the Drinking Water program is to ensure that drinking water treatment and distribution systems are properly designed, operated and maintained to provide safe, reliable drinking water to Florida residents and visitors. Like the ERP program, regulation comprises permitting and other forms of authorization, compliance evaluation—including, in drinking water, rigorous routine monitoring and reporting of more than 80 public health-based water quality standards—technical assistance, and enforcement. The Drinking Water program also implements a variety of measures to promote protection of source water to minimize treatment costs and, therefore, the ultimate cost to system customers. Drinking Water staff, collectively, must be expert in various engineering disciplines and the chemical, biological and overall public health aspects of drinking water quality. Effective program implementation requires extensive site visits and physical inspections in order to make permitting decisions and, especially, to evaluate ongoing compliance of drinking water facilities.

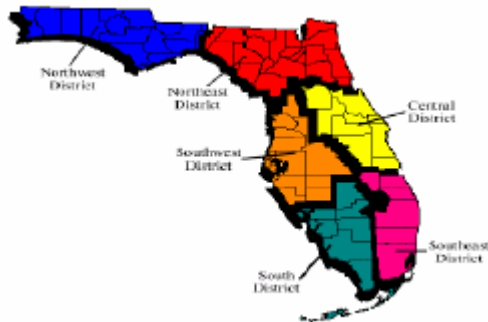
The Drinking Water program is conducted out of DEP’s six district offices with oversight by the Division of Water Resource Management in Tallahassee. As with the ERP program, district Drinking Water staff implements the extensive day-to-day permitting workload, compliance inspections and enforcement activities. For example, there are about 5,000 drinking water permit applications each year, the majority of which involve the addition, expansion, modification and repair of distribution lines to serve customers. Tallahassee headquarters is responsible for program oversight and statewide consistency, which will be outlined in the workload analysis below.

In its statutory role as lead agency, DEP implements the field aspects of the regulatory program through nine approved county health departments and oversees the work of these offices in conjunction with Department of Health Tallahassee staff. (More about the relationship with the Department of Health is included in the workload analysis, below.) In addition, Tallahassee personnel undertake a variety of non-regulatory functions associated with federal (EPA) work-plan commitments, which are funded by the federal Drinking Water grant. These include small system financial capacity development and consumer confidence reporting.

See [www.dep.state.fl.us/water/drinkingwater/index.htm](http://www.dep.state.fl.us/water/drinkingwater/index.htm) for more information on the Drinking Water program.



## DEP Regulatory Districts



## Staffing, Workload and Efficiencies

### Environmental Resource Permitting

The direct regulatory workload (permitting, compliance and enforcement) involves assuring that activities in uplands, wetlands and other surface waters do not, individually or cumulatively, promote flooding or degrade water quality or habitat for aquatic or wetland dependent wildlife. Where these impacts cannot be avoided, mitigation through the creation or enhancement of wetlands, for example, is required. Where a proposed activity involves the use of sovereign submerged lands, a proprietary authorization on behalf of Florida's Board of Trustees (BOT) of the Internal Improvement Trust Fund is linked to the permit.

Because of the broad range of activities governed by the ERP program under chapter 373, F.S., and the widely varying characteristics of the regulated universe, an extensive variety of different types of permits and other authorizations has been adopted. DEP's authorizations primarily address the water quality, water quantity (flooding), and wetland impacts associated with single-family residences and small multi-family dwellings, docks and marinas, mining, utility construction, coastal development, seaports, navigational dredging, and other water-related projects that are not part of larger plans of development. (As noted before, the water management district ERP program addresses large-scale developments.) The ERP program does not require separate permit renewals or other forms of permits for continuing operation because an ERP permit contains both construction and operational phases.

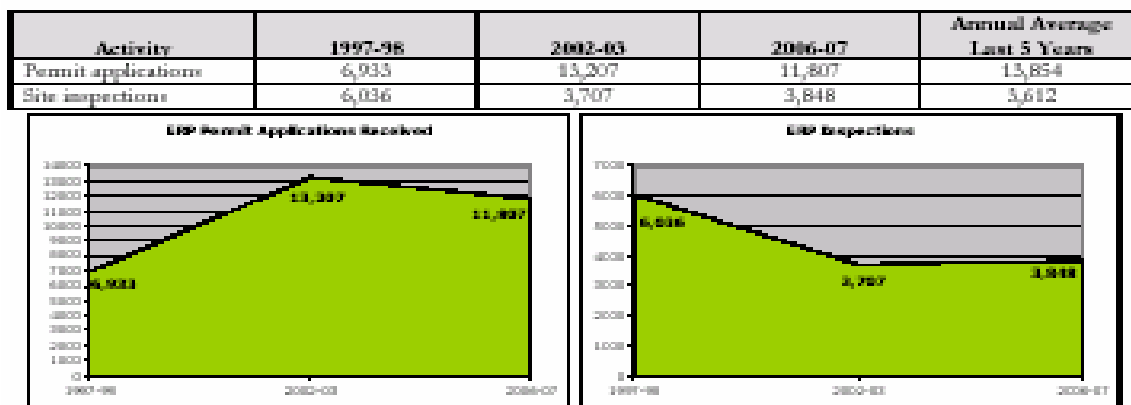
DEP also conducts several thousand site inspections each year as a means of assessing and promoting compliance. Because construction and development is continuous, the universe of ERP-permitted

sites grows continuously as well. There are estimated to be more than 100,000 permitted sites in existence with at least 10,000 new sites each year. As a consequence, and when combined with a static workforce, the percentage of the ERP-regulated universe that DEP staff is physically able to inspect decreases annually, making continuing compliance difficult to assure.

The table and graphics below reflect the workload over the last decade associated with ERP permit, BOT applications and site inspections. The permitting workload during that time has doubled while there has been no net increase in ERP staff. Staff must also address BOT applications, an average of 3,750 annually over the last five years. The decline in inspections reflects the demand to shift

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staff away from physical compliance determinations in order to handle the escalation in permit applications, all of which, by law, must be acted on within statutorily specified timeframes.



There are 177 ERP employees in DEP: 158 in the six district offices and 19 in Tallahassee. Of the 158 district staff, approximately 89 FTE review and evaluate permit applications while 52 FTE conduct field inspections and related compliance and enforcement actions, including data analysis, issuance of warning letters and notices of violation, and development of enforcement documents. The remaining 17 FTE are supervisory and administrative positions. (Executive direction is provided by the offices of the District Directors.) Tallahassee staff is responsible for leadership and program oversight; implementation of the unique wetland delineation and mitigation banking programs; budgeting, accounting and grant management; EPA reporting; contract management; staff training; program rulemaking and policy guidance; data development and management; audits; technical assistance; public education and outreach; clerical assistance; and other similar responsibilities.

On average, each district permitting FTE has been reviewing 150-160 permit applications per year for each of the last five years. This represents a significantly higher workload per FTE than a decade ago. Each inspector has been able to conduct, on average, 65-75 field inspections per year over that same timeframe. This likely represents a similar workload to a decade ago but, as previously noted, many compliance positions have been shifted to permitting responsibilities resulting in an overall steep decline in the number of field inspections and on-site compliance verification.

Data from the first quarter of State Fiscal Year 2007-08 reflect a continuation of the workload trends. There were 2,612 new ERP permit applications and 651 BOT applications received while compliance staff conducted 1,013 inspections. Approximately 91.1% of the inspected sites were determined to be in compliance with their permitting requirements. Staff also handled nearly 600 complaints lodged generally by citizens concerned about the development activities on nearby sites.

#### ERP Efficiency Measures

DEP has spent significant time and resources to develop more efficient ways of implementing the statutory requirements of the ERP program. The success of these efforts is at least partly evidenced by the continuing ability to manage the ever-increasing ERP workload without new staff while maintaining a high rate of compliance (more than 90%) among the sites that are inspected. Several examples highlight these efficiency measures.

“Self-Certification” is an online application to automatically authorize qualifying private, single-family docking facilities (see <http://approd.dep.state.fl.us/erppa/>). An applicant can

immediately determine whether a proposed dock can be constructed without further notice or review by DEP. The process provides a written confirmation of qualification for the applicant's records. In its first 23 months, the Self-Certification program generated 1,044 authorizations that did not have to go through the conventional permitting process.

ERPce is a compliance/enforcement data application that enables DEP's limited compliance staff to access a wide range of electronic data, including sophisticated Geographic Information Systems (GIS) mapping tools, to make site inspections and compliance determinations more efficient and more accurate.

GIS development has led to a suite of other tools being used to manage locational data to streamline the analysis of proposed or ongoing activities and their impacts on Florida's surface waters, including wetlands and wildlife resources. Some tools are available online to enable anyone to map a location in Florida and create a "Resources of Interest" report. These GIS applications make the regulatory process more transparent and easier to understand. See [www.dep.state.fl.us/water/wetlands/techgis/index.htm](http://www.dep.state.fl.us/water/wetlands/techgis/index.htm) for more information.

The ERP program provides other online information to help potential applicants understand the permitting process. Extensive assistance is available at [www.dep.state.fl.us/water/wetlands/erp/permitting.htm](http://www.dep.state.fl.us/water/wetlands/erp/permitting.htm), including contact information, rules, fact sheets, guidance documents, and links to the information outlined immediately above. To supplement this written information, and among the most effective efficiency measure available, DEP encourages applicants and consultants to sit down face-to-face with local permitting staff to discuss projects at their inception (pre-application conferences), review alternatives and prevent problems.

## **Drinking Water**

### **DEP Activities**

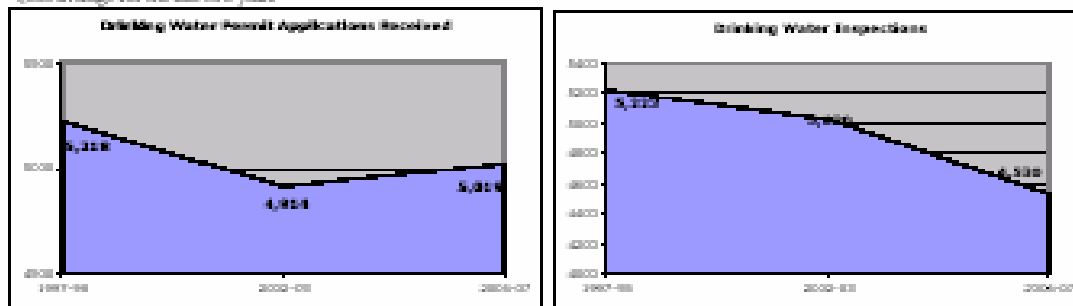
There are approximately 5,900 public water systems in Florida. Nine DEP-approved county health units implement the day-to-day regulatory responsibility for about 1,900 of these systems, covering about half the service population (about nine million people), with routine DEP oversight and regular program audits. DEP staff review permits and assure compliance directly for the remaining 4,000 systems in the other 58 counties. These 58 counties contain the vast majority of smaller drinking water systems, which collectively cover the other nine million people in the service population and often have fewer financial and personnel resources devoted to maintaining compliance.

Regulation focuses on assuring that public water systems are properly built and operated so that treated drinking water meets a variety of public health standards, has sufficient pressure to fulfill customer and fire service demands, and is delivered safely and reliably throughout each system's service area. In general, permits are required to build, expand or modify a public water system; establish, modify or expand a distribution system; and implement various ownership-related changes. Currently, DEP does not require annual operational permits or system renewal permits. The table and graphics below reflect the workload over the last decade associated with drinking water permit applications and site inspections statewide. The permitting workload during that time in terms of simple numbers has remained approximately the same. The number of inspections has dropped somewhat, on average, over the last five years—more than 16% when only the last two years are considered. As with the ERP program, there has been no net increase in drinking water staff during the last decade other than an increase in transitory Other Personnel Service (OPS) staff used to compensate to the degree possible for the lack of career service positions.

In the case of the Drinking Water program, the small decline in the number of physical inspections may reflect the combination of an unchanging number of staff and the significant increase in the complexity of federally mandated drinking water requirements over the last 10 years. DEP has had to focus more staff time on permit evaluations, water quality monitoring and reporting, and extensive technical assistance to drinking water systems. This complexity is primarily a function of the 24 new rules—23 of them federal—the program has been required to adopt and implement over the last decade. These rules reflect a wide variety of different measures, including more stringent drinking water quality standards (arsenic, radiologicals, disinfection byproducts, lead and copper, and others); more aggressive treatment requirements, especially for surface water systems; more complicated and more extensive monitoring and reporting regimens; more rigorous sampling protocols and analytical methods; additional public notification in the event of violations; additional penalties; and more. These changes reflect the advance of scientific knowledge about health effects and risk factors, increased public awareness of the threats to drinking water quality, and increased attention to the public's "right to know." Most have been developed at the federal level and adopted by DEP as required under its primacy agreement with EPA. As drinking water systems continue to adjust to all of these changes, DEP may be able to increase the number of inspections back to historical averages.

Activity	1997-98	2002-03	2006-07	Annual Average Last 5 Years
Permit applications	5,218	4,914	5,019	5,172
Site inspections	5,223	5,030	4,530	4,800*

\*4,380 average for the last two years



There are approximately 90 fulltime FTE in the DEP Drinking Water program: 73 in the six district offices and 17 in Tallahassee. Of the 73 district staff, approximately 20 review and evaluate permit applications while about 43 conduct field inspections and related compliance and enforcement actions, including data analysis, issuance of warning letters and notices of violation, and development of enforcement documents. The remaining 10 FTE are supervisory and administrative positions. (Executive direction is provided by the offices of the District Directors.) Tallahassee staff is responsible for leadership and program oversight; budgeting, accounting and grant management; EPA reporting; contract management; staff training; program rulemaking and policy guidance; data development, management and entry; audits; technical assistance and small system capacity development; consumer confidence reporting; public education and outreach; clerical assistance; and other similar responsibilities.

With the delegation of drinking water activities to nine county health programs referenced above, the permitting and inspection workload is distributed between DEP and these local programs. Of the 5,900 drinking water systems in Florida, DEP staff regulates about 4,000 (68%) directly while delegating most daily responsibilities for the other 1,900 systems to the nine approved county health units. Thus, there are about 55 regulated drinking water systems per DEP district FTE (63 systems per FTE if only direct permitting and compliance staff are counted). DEP's Tallahassee staff does not engage in day-to-day permitting and inspections. (More on the local programs is included later in this section.)

Because of the different sizes and types of systems in the larger counties delegated to county health units, the permitting workload between DEP and the county units differs somewhat from the distribution of systems. DEP each year reviews about 56.4% of all drinking water permit applications and 64% of the relatively few (300+) but substantially more complicated water treatment plant construction applications. With an annual average of some 5,200 permit applications for each of the last five years, DEP reviews about 2,930 of these or 150 applications per permit reviewer each year. Unlike the ERP program with its ever-increasing universe of regulated sites, the number of drinking water systems remains relatively stable. Each DEP inspector is conducting, on average, 112 field inspections per year over the same five-year timeframe.

#### Approved County Health Unit Activities

As already noted, DEP authorizes and oversees county health units to regulate approximately 1,900

systems in nine generally larger counties. The Department of Health estimates that there are some 68 FTE involved in the drinking water program in the nine county health units and 22 FTE at Department of Health headquarters in Tallahassee. With approximately 1,900 drinking water systems in the nine approved counties, there are 28 drinking water systems per field FTE. (This figure compares to 55 systems per DEP FTE). DEP does not have information on the breakdown of permitting versus field inspection staff in the approved county health units.

Statewide data from the first quarter of State Fiscal Year 2007-08 reflect a general continuation of the permitting and inspection workload trends for both DEP and county health units. There were 1,190 new drinking water permit applications received while compliance staff conducted 1,286 inspections. Approximately 87.6% of the inspected sites were determined to be in compliance with permitting requirements. Inspection-based compliance is only one aspect of drinking water compliance. Drinking water systems are also required to adhere to rigorous water quality reporting schedules (monthly, quarterly, annually, and other timeframes depending on the standard in question

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and previous compliance history) and to comply with specific public health water quality criteria and treatment requirements. The overall compliance levels for these other two components of drinking water compliance are over 90% and, in the case of compliance with public health water quality standards, are well over 95%.

#### *Drinking Water Efficiency Measures*

As with the ERP program, DEP has spent considerable effort developing more efficient ways of implementing the statutory requirements of the drinking water program. And as with the ERP program, these efficiencies have enabled the Drinking Water program to manage an ever-increasing workload without new staff. Below are examples of these efforts.

Water quality compliance is determined based on the entry of analytical laboratory data into the Public Water System (PWS) database, which automatically compares data against built-in water quality standards, permit requirements and reporting regimens. This automated system streamlines determinations, reduces error and enables rapid feedback to regulated systems. Overall monitoring and reporting compliance for Florida's 5,900 drinking water systems in 2006-07 was 96.6%. Compliance remained high for the first quarter of 2007-08 at 96.4%. Further improvements to the system, with electronic reporting of lab data, are in development. Basic information from the PWS is made publicly available at [www.dep.state.fl.us/water/drinkingwater/download.htm](http://www.dep.state.fl.us/water/drinkingwater/download.htm).

Each year the Drinking Water program provides, by way of a federally-funded contract with the Florida Rural Water Association, more than 3,000 "circuit rider" visits to the thousands of smaller drinking water systems across Florida. These circuit riders are typically retired professional system operators that offer professional advice and direct technical assistance on plant operations and maintenance, water quality sampling, financial management, changing rule requirements, and other critical information to help operators maintain (or return to) compliance. The Drinking Water program conducted 879 technical assistance contacts in the first quarter of 2007-08 and typically conducts about 3,500 contacts each year. This program is a primary reason that drinking water system compliance is consistently high.

The Source Water Assessment and Protection (SWAP) Program is a tool by which DEP assists local governments to identify and evaluate potential contaminants—hazardous

chemicals, stormwater runoff, waste disposal sites, underground storage tanks, etc.—to the surface and ground water sources of their drinking water. Identification of these potential contaminants is done by applying GIS technology to an increasing inventory of active and historical agricultural and industrial sites and land uses and making that data publicly available. The program’s objective is to promote protection of drinking water at its source and not just at the tap, thereby reducing treatment costs and, in turn, consumer bills. More information on the program and county-by-county data are available at [www.dep.state.fl.us/swapp/](http://www.dep.state.fl.us/swapp/).

## **Costs and Revenues**

The following cost analyses for DEP’s ERP and Drinking Water programs are based on the 2007-08 General Appropriations Act as allocated by DEP’s Office of Budget and Planning. (2007-Special 13

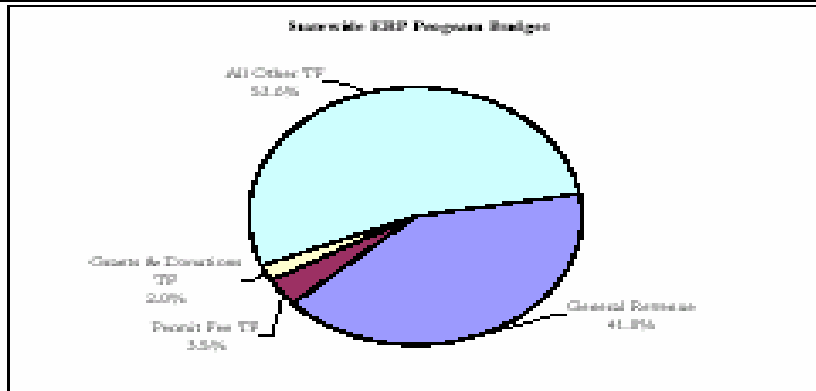
Session C changes would have no appreciable effect on the analyses for these particular programs. In addition, portions of the analyses were submitted to the Legislature in response to questions about DEP’s fees during Special Session C; they have been maintained here for the sake of consistency.) Neither of these programs is a separate budget entity within DEP’s budget. Furthermore, to take advantage of operational efficiencies and reduce costs to Florida’s taxpayers, many of their activities have been integrated with those of other, related DEP programs. As was requested when DEP provided information to the Senate during Special Session C, the budget information here includes direct funding associated with the staff in each program, both in Tallahassee and the DEP District Offices, and prorated calculations to account for indirect and other associated costs, including executive direction in DEP’s district offices and supervisory and support staff that may also supervise or support other DEP programs. There also is a discussion of Drinking Water program costs to the Department of Health and the nine approved county health units discussed above, based on information from the Department of Health. It is provided as context for the options outlined later in the report.

Given Florida’s current shortfall in General Revenues and the fact that the GAA proviso directed DEP to conduct this analysis “to determine the sufficiency of each regulatory program for which a fee schedule exists,” the following cost and revenue examinations will focus primarily on the relative relationship between GR and fees.

## **Environmental Resource Permitting**

The statewide budget for the ERP program in 2007-08 is estimated at \$17,381,051. The funding sources for budget are presented in the following table and pie chart.

General Revenue	% of Total	Permit Fee TF	% of Total	Grants & Donation TF	% of Total	Other TF	% of Total	Total
\$7,119,390	41.0%	\$605,078	3.5%	\$347,162	2.0%	\$9,309,610	53.6%	\$17,381,051



General Revenues provide 41% of the ERP program budget in 2007-8 while permit fees represent 3.5% of the budget. The amount of Grants and Donations budget is limited and fluctuates from year to year because the federal government does not offer annual programmatic grants for state

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wetland programs but only periodic small competitive grants. Other trust funds make up more than half the statewide ERP budget and include primarily Ecosystem Management and Land Acquisition trust funds with limited amounts of Administrative Trust Fund budget in the district offices. The legislature has appropriated funds to the ERP program—as it has to other DEP water regulatory programs—from a shifting variety of different trust funds and amounts over the last decade. The revenues from ERP permit fees in 2006-07 were \$1,970,685, which equates to about 11.3% of the program’s overall cost. As shown in the chart, however, the amount of permit fee revenues budgeted to the program represents only about 3.5% of the ERP budget. DEP’s Permit Fee Trust Fund is the repository of virtually all agency permit fee revenues. While these revenues are tracked by originating program, they have not historically been budgeted on a one-for-one basis back to the originating programs. As a result of budgeting decisions made when the ERP program was created and when DEP was created by merger more than a decade ago, additional GR was budgeted to the ERP program in lieu of permit fees and other trust fund sources.

Because the proviso directing this study focuses on permit fees as a potential source of additional program revenues and, specifically, as a potential substitute for currently budgeted GR, it is important to consider DEP’s permit fee authorities. ERP fees are governed by s. 373.109, F.S., which reads as follows:

*373.109 Permit application fees.—When a water management district governing board, the department, or a local government implements a regulatory system under this chapter or one which has been delegated pursuant to chapter 403, it may establish a schedule of fees for filing applications for the required permits. Such fees shall not exceed the cost to the district, the department, or the local government for processing, monitoring, and inspecting for compliance with the permit.*



*(1) All moneys received under the provisions of this section shall be allocated for the use of the water management district, the department, or the local government, whichever processed the permit, and shall be in addition to moneys otherwise appropriated in any general appropriation act. All moneys received by the department under the provisions of this section shall be deposited in the Florida Permit Fee Trust Fund established by s. 403.0871 and shall be used by the department as provided therein. Moneys received by a water management district or the department under the provisions of this section shall be in addition to moneys otherwise appropriated in any general appropriation act.*

*(2) The failure of any person to pay the fees established hereunder constitutes grounds for revocation or denial of the permit.*

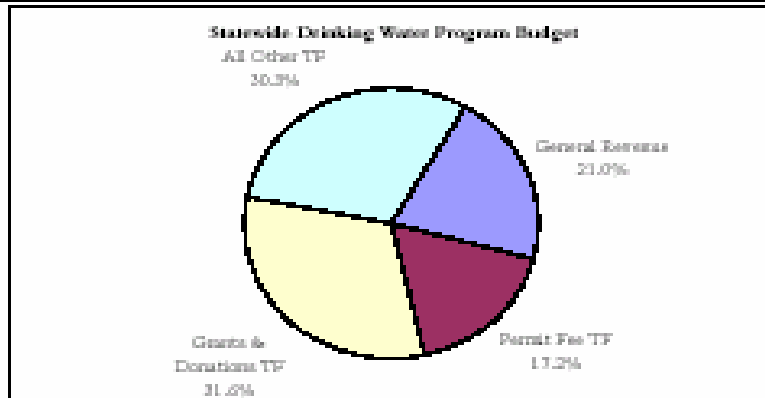
As with other DEP regulatory programs, the ERP program historically has been encouraged to keep permit fees as low as possible. The regulated universe of DEP's component of the ERP program, in particular, involves thousands of activities conducted by individual homeowners and small enterprises every year. State law exempts much of this universe from fees or authorizes only nominal fees. Specific exemptions are found in s. 403.813, F.S., while certain fee waivers and reductions are included in s. 218.075, F.S. More than one third of the authorization requests reviewed in the ERP program each year relate to a variety of statutorily exempted activities, such as certain docks and other water-related structures and various maintenance activities. DEP must review and verify that these activities qualify for the statutory exemptions and, if they do (many do not), they are exempt from fees under chapter 120, F.S. Another 20% of the ERP authorizations involve agency informal wetland jurisdictional determinations for which there are no fees. And a plurality of other activities is covered by general permits (streamlined permits for essentially similar activities), the fees for which have been set at \$100 for many years. The fee schedule for the ERP

program is included in DEP's fee rule, chapter 62-4, F.A.C., available at [www.dep.state.fl.us/legal/Rules/rulelistnum.htm](http://www.dep.state.fl.us/legal/Rules/rulelistnum.htm). (The rule includes drinking water fees as well.)

### **Drinking Water**

DEP's statewide budget for the statewide Drinking Water regulatory program budget for 2007-08 is \$6,492,353. (There are a variety of non-regulatory functions conducted by the Drinking Water program associated with federal grant commitments and funded by federal grants, which are excluded from this calculation and cannot be used for regulatory activities.) The funding sources for the budget are presented in the following table and chart.

General Revenue	% of Total	Permit Fee TF	% of Total	Grants & Donation TF	% of Total	Other TF	% of Total	Total
\$1,361,092	21.0%	\$1,115,536	17.2%	\$2,050,180	31.6%	\$1,965,536	30.3%	\$6,492,353



General Revenues comprise 21% of the 2007-08 program budget; permit fees represent a little over 17%. Contrary to the situation with the ERP program, there is an approximate one-to-one relationship between drinking water permit fee revenues and the fee revenues budgeted back to the program. Specifically, the amount of permit fee revenues budgeted in 2007-08 is \$1,115,536, which is 92.4% of total prior year fee revenues of \$1,207,105 in 2006-07. The amount of Grants and Donations budget is limited by the amount of the annual federal drinking water grant—Florida gets the maximum amount available from EPA in the form of an annual programmatic grant to assist with implementation of this federally delegated program. The remaining 30% of the budget includes funds from the Ecosystem Management and Water Quality Assurance trust funds with limited amounts of Administrative Trust Fund budget in the district offices. To a lesser degree than for the ERP program, the legislature has appropriated funds for drinking water from several different trust funds over the last decade.

To focus again on the permit fee question, DEP's drinking water fees are governed by several subsections of s. 403.087, F.S., which read in pertinent parts:

**403.087**

**(6)(a)** *The department shall require a processing fee in an amount sufficient, to the greatest extent*

*possible, to cover the costs of reviewing and acting upon any application for a permit or request for site-specific*

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*alternative criteria or for an exemption from water quality criteria and to cover the costs of surveillance and*

*other field services and related support activities associated with any permit or plan approval issued pursuant*

*to this chapter. However, when an application is received without the required fee, the department shall*

*acknowledge receipt of the application and shall immediately return the unprocessed application to the*

*applicant and shall take no further action until the application is received with the appropriate fee. The*

*department shall adopt a schedule of fees by rule, subject to the following limitations:*

**4.** *The permit fee for any of the following permits may not exceed \$7,500:*

**c.** *Drinking water, construction or operation permit.*

**8.** *The permit fee for any of the following permits may not exceed \$500:*

**c.** *Drinking water, distribution system permit.*

**10.** *The general permit fees for permits that require certification by a registered professional engineer or*

*professional geologist may not exceed \$500. The general permit fee for other permit types may not exceed*

*\$100.*

**(e)** *For all domestic waste collection system permits and drinking water distribution system permits, the*

*department shall adopt a fee schedule, by rule, based on a sliding scale relating to pipe diameter, length of the*

*proposed main, or equivalent dwelling units, or any combination of these factors. The department shall*

*require a separate permit application and fee for each noncontiguous project within the system.*

As with the ERP program, the Drinking Water program historically has been encouraged to keep permit fees as low as possible. In addition, there is a \$500 statutory fee cap [s. 403.087(6)(a)8.c., F.S.] on drinking water distribution systems, which typically represent more than 90% of the 5,000 or more drinking water permit applications submitted to DEP each year. These applications often require extensive review because of the size and complexity of the systems. Paragraph (6)(e) of s. 403.087 also requires that distribution system permit fees be set on a sliding scale to account for various factors reflecting the relative size of the system—not necessarily the complexity of the review—which means that most fees must be set below the cap in any event. Also, to the extent general permits are used to streamline the permitting process for applicants conducting precisely similar activities, a \$100 statutory cap exists unless the general permit requires a professional engineer's certification, in which case the statutory cap is \$500 [s. 403.087(6)(a)10, F.S.].

The majority of Florida's 5,900 regulated public water systems are small communities, small private utilities and, especially, thousands of small businesses and other small private operations. More than 3,600 systems (61% of all systems) serve no more than 100 persons each. State policy has been to minimize fees particularly for this universe and, in some cases, to waive or exempt fees, such as is provided for certain local governments in s. 218.075, F.S.

Department of Health and Approved County Health Unit Costs

As noted at the beginning of this section, a summary of the costs of the Drinking Water program that DEP delegates to nine approved county health units is necessary to understand the implications of current revenues and potential fee increases. According to the Department of Health, the cost of the delegated program in 2006-07 was approximately \$8.5 million; its revenue sources are reflected in the following table:

Department of Health Drinking Water Funding*	
Revenue Source	Amount
1. State General Revenue	
▪ To county health units	▪ \$2.02 million
▪ To Department of Health lab	▪ \$1.51 million
2. Local (county) general revenue	\$1.24 million
3. Local (county) fees	\$1.02 million
4. Lab fees	\$0.93 million
5. State permit fees (DEP rule authority)	\$1.00 million
6. Local (county) penalty collections	\$0.13 million
7. Direct subsidy from DEP	\$0.80 million
<b>Total</b>	<b>\$8.43 million</b>

\*Excludes small drinking water systems not regulated under chapter 403, F.S.

Under an operating agreement between DEP and the Department of Health, the nine approved county health units keep 80% of the state permit fees they collect while 20% is returned to DEP to underwrite DEP's costs to oversee and audit the local programs and to administer the other tasks that fall directly on DEP: rulemaking, policy development, federal reporting, database development and administration, technical assistance, and other similar functions. (The county health units are also free to establish and collect their own local fees, the aggregate amount of which was collected last fiscal year is included in item 3 of the table above.) As noted in item 7, DEP also transfers \$800,000 annually to the Department of Health for program implementation of which, DEP is advised, \$500,000 goes to the counties with \$300,000 remaining with Department of Health headquarters.

With respect to the proviso direction to DEP to review its Drinking Water program and, in particular, the fee revenues that support it, any changes to DEP fee revenues would affect the revenues of the approved county health units based on the split of state fees noted in the preceding paragraph. This issue and its relationship to state General Revenues will be discussed in the Options section that follows.

## Options

The Drinking Water and Environmental Resource Permitting programs cannot reduce their implementation costs in any significant way and continue to meet their federal and state statutory obligations. Both programs have confronted a burgeoning workload over the last decade without staff increases while Florida's population has grown by more than 25%, with all the construction, development and infrastructure that a growing population demands. Permitting workload for the ERP program, in particular, has skyrocketed during that time.

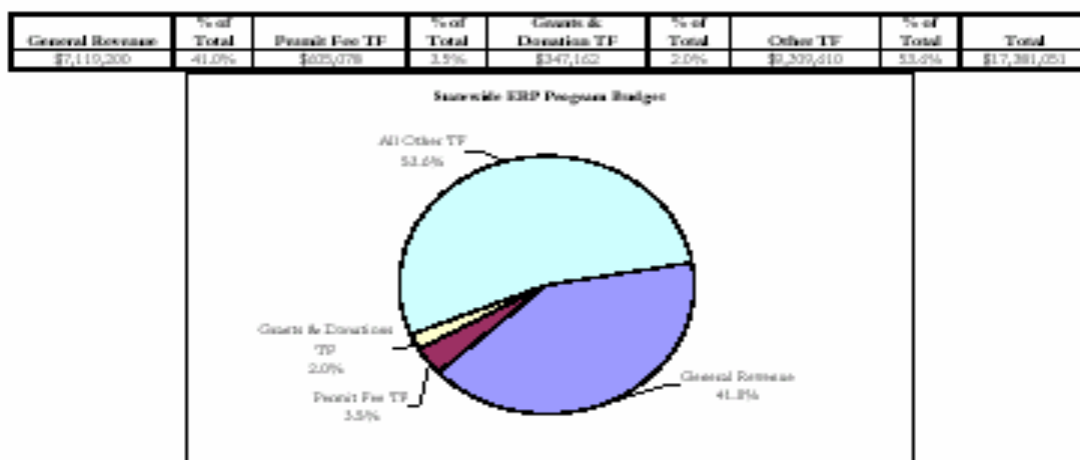
The ability to assure regulatory compliance and protect Florida's public health and natural resources is challenged by an expanding universe of regulated activities and sites, more and more federal and state public health and environmental standards based on advancing science and risk assessment, and a growing set of other statutory obligations to carry out. The demand for responsive public service by citizens and the regulated universe increases as well. DEP continues to move forward

with a wide range of efficiency measures to streamline the operations of these programs—and all programs—but efficiencies alone cannot keep up with growth and demand.

With the need to maintain current revenues to underwrite effective programs, the options that follow will focus on the relationship between GR—identified by the legislature as a vulnerable funding source—and permit fees, called out in the Special Session C proviso for particular attention in this report. For both the ERP and Drinking Water programs, the costs and revenues discussed in the previous section will be considered in light of permit fee flexibility and limitations.

### Environmental Resource Permitting

The following table and graphic are repeated as an aid to considering the fee options discussed below.



General Revenue represents about 41% of the ERP program's statewide budget. Permit fee revenues as budgeted represent 3.5% of the budget but in total (\$1,970,685 collected last fiscal year) would equal somewhat more than 11% of the program's budget. At the simplest level, then, if the objective were to replace all GR with permit fee revenues over time—and assuming all ERP fee revenues were budgeted to the program—ERP fees collectively would have to bring in about \$9.1 million to replace the \$7.1 million current GR while continuing to recoup the existing nearly \$2 million in permit fee revenues. Fees, then, would have to be about 4.5 times higher, on average, than they are now (\$9.1 million divided by \$1.97 million).

Consider a different objective—fees established to cover 25% of total program costs (\$4.35 million), which approximates the fee share from 10-15 years ago. In this case, fees would have to recoup an additional \$2.4 million beyond current collections. To do so they would have to be increased about 2.2 times, on average (\$4.35 million divided by \$1.97 million). Under this scenario, GR could be reduced from \$7.1 million to about \$4.7 million and would then represent a roughly equal split with fee revenues, with remaining program costs coming from other trust funds.

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Any number of other scenarios could be considered depending on the revenue objective. If the objective were to have fees cover one-third of ERP program costs (\$5.8 million), fees collectively

would have to bring in about \$3.7 million more than they do currently. This would require fees to be about 2.9 times what they are now (\$5.8 million divided by \$1.97 million), reducing the amount of GR needed to implement the program to about \$2 million. All of these estimates assume that approximately 100% of ERP fee revenues would be budgeted to the program. Recall from the revenue analysis in the previous section that, currently, only about one-third of ERP fee revenues—\$605,000 of about \$1.97 million—are budgeted to ERP for historical reasons. Note, however, that any change to this distribution would have an impact on programs currently receiving the revenues, which would have to be accounted.

An across-the-board increase in permit fees to address any scenario is not practical. First, as noted earlier, DEP is statutorily prohibited from charging fees for a significant plurality of ERP authorizations (exemption verifications). There also are statutory fee waivers and reductions for economically challenged local governments. In addition, the ERP fee structure was adopted to accommodate a wide range of potential projects and activities, many of which do not occur with any regularity—especially during times of construction downturn such as Florida faces now—making revenues unpredictable. Lastly, a large percentage of fees are for permit applications submitted by individual homeowners or small business operations with widely varying economic wherewithal that could be adversely affected by large fee increases. A more targeted approach to fee increases would have to be considered.

Increasing fee revenues in the ERP program would most successfully be accomplished by targeting a relative few of the more than 200 permit types/subtypes in the program. For example, of the approximately 11,800 permit applications received last year, more than half were either informal wetland jurisdictional determinations conducted by DEP or various statutory exemptions that the agency had to review and verify, for which no fees are charged. Even a \$100 fee for these activities would bring in as much \$600,000 or more. A still relatively nominal \$200 fee would generate twice that much, and so on. Statutory changes would be required to allow the assessment of fees for DEP's review and verification of activities proposed as exempt from permitting, which currently are exempt from fees under chapter 120, F.S. There also were more than 1,000 general permits of various kinds with fees of \$100, the same fee that has been charged since the 1970s. Increasing general permit fees to \$500 would generate perhaps \$325,000 in additional revenues. There were another 1,300 permits associated with five different individual permit types for variously-sized projects having impacts to wetlands and other surface waters, with fees ranging from \$500 to \$10,000. Doubling the fees for these activities, collectively, would bring in perhaps \$900,000 in additional fee revenues annually. These fees have not been increased for some time.

Assessing \$200 for the wetland determinations and statutory exemptions, \$500 for the general permits, and doubling the five referenced individual permits would, at least in theory, generate as much as \$2.4 million, raising ERP permit fee revenues to around \$4.4 million in total, right at about 25% of program costs and close to the average share of 10-15 years ago. Selective increases to the fees for other authorizations could exceed the 25% share of program costs and further reduce the need for GR. However, extending fees significantly beyond the levels necessary to generate 25% of program costs would require very large increases, exceeding 2.5 to as much as 4.5 times current fee levels depending on the revenue objective. Beyond the sticker shock associated with increases of

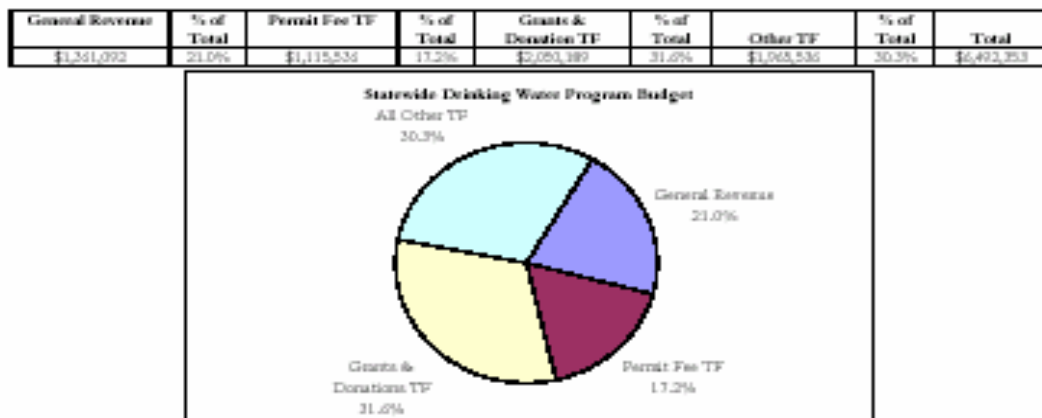
this magnitude, the impact of significantly higher fees on individual homeowners and small

businesses would be problematic.

Two facts should be noted here. First, as alluded to several times, the ERP program regulates activities that can fluctuate significantly in number from year to year depending on economic conditions and the state of the construction industry. They may also fluctuate as a result of hurricanes and other storms significant enough to require reconstruction. These circumstances cause the number of permit applications to fluctuate correspondingly. No matter how many new permit applications DEP receives in any given year—the range has been about 12,000 to 15,500 each year during the last five years—they all are added to the growing regulatory universe over which DEP must try to assure continuing compliance.

Secondly, the impact of the new and still evolving ERP program in Northwest Florida is uncertain. Chapter 2006-228, Laws of Florida, required the phased implementation of an ERP program in Northwest Florida, which will be fully adopted later in 2008. This area was exempted from the streamlined ERP program adopted in the rest of Florida nearly 15 years ago. It is likely that many activities in Northwest Florida that historically have required a general permit—and often multiple permits and multiple fees from DEP and the Northwest Florida Water Management District—will, under the more protective ERP program, require a single, more comprehensive individual permit. These individual permits have higher fees than general permits but, because of the streamlining associated with the ERP program, there likely be fewer permits required overall and thus fewer fees paid. The net revenue effect of this potential shift to fewer permits but higher individual permit fees will remain unclear for several years.

## Drinking Water



General Revenue represents about 21% of DEP's drinking water budget while permit fee revenues account for 17.2% of the budget—nearly equal to last year's fee revenues. Again looking at the issue in its simplest terms and assuming the objective were to replace GR with permit fee revenues over time, Drinking Water fees collectively would have to be more than doubled. Fees currently bring in about \$1.2 million (slightly more than currently budgeted) and would have to bring in an additional 21

\$1.36 million for a total of \$2.5 - \$2.6 million to replace 100% of the GR now appropriated to the

program.

The potential for an across-the-board increase in drinking water permit fees is limited by the statutory fee waivers and reductions for certain “disadvantaged” local governments. (There are no zero-dollar statutory exemptions in Drinking Water as there are in ERP.) There also are statutory fee caps for both water treatment plant construction (\$7,500) and distribution system (\$500) permits, along with the requirement for a sliding scale of fees below the cap and separate statutory caps of \$100 or \$500 on general permits. Most drinking water permit fees are not currently set by rule at the statutory caps. However, a significant percentage of current fees are for permit applications submitted by the thousands of small drinking water systems, both public and private, with widely varying economic wherewithal. Some targeting of fee increases would have to be considered to account for this situation.

Because the universe of drinking water systems is relatively stable, as compared to the constantly fluctuating ERP universe, it is much simpler to analyze potential permit fee adjustments. On average over the last five years, the Drinking Water program has received about 5,200 permit applications. Approximately 6% of those applications (320) each year address the construction or modification of drinking water treatment plants, which have a wide fee range from \$50 to \$7,500 (statutory cap) depending on the size of the facility and the nature and extent of the construction. Table 1 summarizes the potential revenue changes associated with different increases in the current fee structure. Because of the limited number of treatment facility construction applications each year, there is a practical limit to the amount of additional revenues that could be recouped under the existing statutory cap if a sliding scale to account for the size and complexity of facilities is to be maintained. Often, the size of a facility is a reflection of the economic wherewithal of the applicant.

Revenue Table 1 – Drinking Water Treatment Plant Construction Permits		
Current Fee Revenue	Option 1*	Option 2*
\$360,000	Adjust fee range upward, establishing a minimum fee of \$500 and compressing the fee range at the high end of current rule maximum; no change to statutory maximum of \$7,500	Adjust fee range upward, establishing a minimum fee of \$500; increase the current rule maximum by a factor of 2 or more; change (double) the statutory fee cap to \$15,000.
Projected revenues →	\$575,000	\$875,000
Revenue increase →	\$215,000	\$615,000

\*Assumes statutory fee waiver/reduction for “disadvantaged” local governments is eliminated

The bulk of drinking water permit applications each year (nearly 4,900 on average, or about 94%) address distribution systems, the extensive systems of pipes, pump stations and related facilities that convey drinking water from the treatment plant to customers. Because of the continuing growth of Florida’s population and its shifting development patterns, distribution systems are regularly built, modified, repaired, and rehabilitated. The services of professional engineering consultants are often required in the design of these systems. Distribution fees currently range from \$50 to \$500 (statutory cap) depending on the extent and complexity of construction. Most permit applications, on the order of 80%, are covered by a \$250 fee. Table 2 summarizes the potential revenue changes associated with different increases in the current fee structure.



Revenue Table 2 – Drinking Water Distribution System Permits		
Current Fee Revenue	Option 1*	Option 2*
\$1,500,000	Adjust fee range upward, establishing a minimum fee of \$100 and generally doubling all fees within the range with the exception of the \$500 statutory cap, which would remain. Majority of fees would be \$500 rather than current \$250.	Adjust fee range upward, establishing a minimum fee of \$250; generally triple all current fees of \$250 or more; increase the statutory fee cap to \$1,500. Majority of fees would be \$750 rather than current \$250.
Projected revenues →	\$2,350,000	\$3,975,000
Revenue increase →	\$1,050,000	\$2,675,000

\*Assumes statutory fee waiver/reduction for “disadvantaged” local governments is eliminated

Currently, Florida’s 5,900 drinking water systems do not pay operating fees of any kind; permit fees address only construction activities. In contrast, domestic and industrial wastewater treatment facilities that discharge to surface waters in Florida are required to pay annual “regulatory program and surveillance fees” pursuant to s. 403.087(6)(a)12., F.S. These are annual operating fees, over and above permit application fees, used to defray the cost to regulate them and assure their compliance with state and federal environmental and public health requirements. Consideration could be given to establishing similar annual operating fees for drinking water facilities. Given Florida’s growing water supply demands, the idea of annual operating fees for drinking water systems merits serious consideration. Additional statutory authority likely would be needed to clearly authorize such fees. Table 3 outlines one possibility for annual operating fees. In all cases, operating fees are identified along a sliding scale to account for the different types and service population characteristics of the 5,900 drinking water systems in Florida.

Revenue Table 3 – Drinking Water System Annual Operating Fees		
System Type	Number of Systems	New Fee
Community systems:		
▪ 25 – 500 served	▪ 993	▪ \$75
▪ 501-3,300	▪ 432	▪ \$150
▪ 3,301-10,000	▪ 149	▪ \$500
▪ 10,001-50,000	▪ 157	▪ \$2,500
▪ 50,001-100,000	▪ 48	▪ \$5,000
▪ > 100,000	▪ 39	▪ \$7,500
Non-Community systems:		
▪ Transient population	▪ 993	▪ \$50
▪ Non-transient population	▪ 432	▪ \$100
	5,912 total systems	
Projected revenues →	N/A	\$1,389,975*

\*Assumes statutory fee waiver/reduction for “disadvantaged” local governments is eliminated

### Revenue Distribution

As discussed in the last section, the nine county health units delegated by DEP keep 80% of the state permit fees they collect for the 1,900 systems they regulate, returning 20% to cover DEP’s costs to oversee and audit the local programs and conduct all rulemaking, federal reporting, database development and administration, technical assistance, and other similar functions. DEP conducts all

program activities and collects all permit fees associated with the 4,000 systems in the other 58 counties. Under the revenue split, any additional revenues generated by increased permit fees or

new operating fees would be split between DEP and the Department of Health along these same lines.

If Option 1 in all three tables above were implemented—an increase to permit fees within existing statutory caps and creation of a new operating fee—total fee revenues would be increased by an estimated \$2.6 million. Under the DEP-Department of Health split of fee revenues, approximately \$1.6 million would accrue to DEP while almost \$1 million would accrue to the Department of Health. The increase to DEP revenues would be greater than the amount of GR currently budgeted to the Drinking Water program, with the excess available to reduce the funding strain on other DEP trust funds. According to information provided by the Department of Health, the revenue distribution under this scenario would equal about half of the current state GR appropriation budgeted for the nine approved county health units.

The Department of Health asked DEP to identify options in this report that could, potentially, reduce more of its reliance on GR. From the summary of the Department of Health-approved county health unit drinking water budget provided earlier, state and local (county tax revenue) GR appropriations are as follows:

State General Revenue

- To county health units - \$2.02 million
- To Department of Health lab - \$1.31 million

Local (county) general revenue - \$1.24 million

DEP believes that the Department of Health has the opportunity to address the GR appropriated for laboratory costs through direct means, such as additional lab assessments, rather than through permit fees. Thus, that GR is not considered in this analysis. However, the state GR distributed by the Department of Health to the approved county health units to implement the Drinking Water program is roughly analogous to GR appropriations to DEP. In order to replace the bulk of this estimated \$2.02 million, greater state drinking water permit fee increases would have to be implemented. If, for example, Option 2 in Tables 1 and 2 (higher permit fees for treatment plants and distribution systems) were implemented in addition to the new operating fees outlined in Table 3, approximately \$1.7 million in additional fees would be generated for the Department of Health,

or about 83% of the amount of GR currently being appropriated and distributed to the county health units. Under this scenario, approximately \$3 million additional fee revenues would accrue to DEP, which would eliminate the need for any GR appropriation to DEP's Drinking Water program and would reduce the burden on other trust funds currently being appropriated to the program by about \$1.6 million.

Some combination of permit fees and operating fees could be adjusted upward, at least in theory, by an additional 20% on average to generate enough total fees to cover the entire amount of GR distributed by the Department of Health to the approved county health units—about an additional \$300,000. In turn, another \$600,000 in fees would accrue to DEP, which would reduce the need for any other trust fund subsidies to the Drinking Water program; DEP's share would be entirely paid for by its federal grant and fee revenues. However, to achieve this objective, fees would have to be nearly four times current levels on average.

To use state fees to subsidize the local GR (county tax revenues) provided to the approved county health units, reducing the local tax burdens of the nine approved counties, would require substantial further state fee increases. These increases would generate fees beyond DEP's needs to fund its Drinking Water program at current levels. DEP could take the "excess" and provide it to the Department of Health directly, over and above the \$800,000 transfer DEP currently provides (see Costs and Revenues, above), to further subsidize that agency's drinking water program operations. On the other hand, DEP could expand and enhance its own compliance and technical assistance efforts, assuming the additional fees were accompanied by staff increases. However, fees at the levels necessary to achieve these outcomes likely would be difficult to implement.

## **Conclusions**

DEP's Environmental Resource Permitting and Drinking Water programs operate efficiently, with a minimum of staff and funding, to fulfill expansive environmental and public health obligations under chapters 373 and 403, Florida Statutes. The programs collectively review and act on 15,000 – 20,000 permit and other authorization applications each year, review a continuous stream of monitoring data, and conduct more than 8,000 inspections and 3,500 technical assistance contacts throughout Florida. They must oversee, to the maximum extent practical, the continuing compliance of more than 5,900 stationary drinking water systems and a growing universe of perhaps 10,000 new sites and activities each year subject to the requirements of the ERP program. These activities demand a highly professional staff with a broad range of engineering and scientific expertise. The programs implement many other activities, including a host of specific streamlining and efficiency measures outlined in the report, to protect the health of Florida's more than 18 million residents and more than 80 million annual visitors and to preserve Florida's unique ecosystems and habitats.

DEP conducts all of these activities with fewer than 270 full-time staff on a collective budget of less than \$24 million—one staff person for every 68,500 Floridians at an average cost of \$1.31 per citizen, most of which already is subsidized by fees on regulated entities, assessments on polluters, and federal government grants.

The Special Session C proviso language focuses on the relationship between costs and revenues, particularly fee revenues, presumably with the objective of evaluating the ability of fees to support more of the programs' costs so that GR could be reduced. Currently, fees cover about 17% of Drinking Water program costs while GR supports about 21%. Thus, drinking water fees would have to be somewhat more than doubled, collectively, to replace all GR. As outlined in the analysis, this likely could only be done through a combination of increased permit fees and implementation of a new annual operating fee for drinking water systems. Some statutory changes would likely be necessary to accomplish this objective.

The report also outlines the implications drinking water fee changes have for the revenues of the Department of Health and the nine county health units approved by DEP to implement the state Drinking Water program under part VI of chapter 403, F.S. Fee increases would accrue to the benefit of the Department of Health and the nine counties based on the fee split with DEP described in the analysis. The basic option for replacing DEP's GR appropriation for Drinking Water would potentially allow the Department of Health to replace about one-half the state GR

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distribution to the nine county health units. The report also outlines the effects of other options on

the Department of Health GR situation and the simultaneous consequences for DEP revenues and the Drinking Water program as a whole.

The situation in the ERP program is more complicated or at least differently complicated. Permit fee revenues currently represent about 11% of total program costs. (As noted in the analysis, only about one-third of these fees are budgeted to the program in the current fiscal year. Shifting this distribution in the future would require accounting for the potential consequences to programs now funded by the revenues.) General Revenues support about 41% of ERP program costs at present. ERP fee revenues collectively would have to be more than quadrupled if the objective were to replace all GR now going to the program, assuming all ERP fee revenues accrued to the benefit of the program. It does not appear realistic to undertake this magnitude of fee increases given the nature of the regulated universe, which includes many individual homeowners and small businesses and many activities that are statutorily exempt from regulation but that still require extensive resources to oversee.

The analysis in this report focuses on potential fee increases for a subset of the universe of ERP activities and authorization applications. Specifically identified are those with the highest volume that currently have no fees or only minimal fees; and a limited number of individual permit types that require extensive review and already bring in a relatively significant amount of fee revenue, but for which increased fee assessments could be considered appropriate. Statutory changes would be required to implement some of these increases, including a change to allow fee assessments for “statutory exemptions.” If implemented, the fee increases appear sufficient to bring fee revenues back to historical levels of about 25% of total program costs. This would reduce, but not eliminate, the need for GR to implement the ERP program. As noted, greater increases appear problematic. As identified in the analysis, DEP could propose increases for some fees based on existing statutory authority, including within some of the statutory fee caps and requirements for sliding scales. Other potential fee increases would require statutory changes: for example, authority to require fees for statutory exemptions; increases or elimination of fee caps for certain general permits; specific authority for annual operating fees; and elimination or adjustment of existing fee waiver and reduction provisions. In addition, given the longstanding expectation that agency fees be kept low, consideration would have to be given to adopting explicit statutory direction to DEP to increase fees to achieve specific objectives along with more explicit, consistent statutory language relating to the costs fees are intended to recoup.

DEP must implement fee changes through rulemaking under chapter 120, F.S. The extent and magnitude of potential fee changes would require a long and no doubt controversial rulemaking process that could only be implemented in phases over time. Many stakeholders would have an interest in—and objections to—fee increases and DEP would have to convene a technical advisory committee of these stakeholders to analyze and account for their legitimate concerns in the rulemaking process. Because of the procedural and public participation requirements of chapter 120, F.S., non-controversial rulemaking often takes a year or more to conclude; rulemaking to increase a wide range of fees by significant amounts would take substantially longer.